

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1513

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74 - 1513

B
P/S

STEVEN F. BROWN,

Appellant,

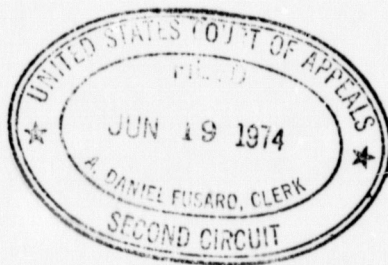
-against-

MAJOR GENERAL WILLIAM KNOWLTON,
Superintendent, United States Military
Academy, BRIGADIER GENERAL SAMUEL
WALKER, Commandant, United States
Military Academy, and ROBERT F. FROEHLKE,
Secretary of the Army,

Appellees.

On Appeal from the United States
District Court for the Southern
District of New York

APPENDIX



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DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
STEVEN F. BROWN,

Plaintiff,

-against-

MAJOR GENERAL WILLIAM KNOWLTON,
Superintendent, United States Military
Academy, BRIGADIER GENERAL SAMUEL
WALKER, Commandant, United States
Military Academy, and ROBERT F. FROEHLKE,
Secretary of the Army,

Defendants.
-----x

UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
STEVEN F. BROWN,

Plaintiff,

-against-

MAJOR GENERAL WILLIAM KNOWLTON,
Superintendent, United States
Military Academy, BRIGADIER
GENERAL SAMUEL WALKER,
Commandant, United States
Military Academy, and ROBERT F.
FROEHLKE, Secretary of the Army,

Defendants.
-----x

#40361
OPINION

72 Civ. 3184
R.J.W.

A P P E A R A N C E S

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FILED
U.S. DISTRICT COURT
FEB 14 11 29 AM '74
S.D. OF N.Y.

MICROFILM
FEB 14 1974

WARD, D. J.

Plaintiff and defendants each move for summary judgment pursuant to Rule 56, Fed. R. Civ. P. For the reasons hereinafter stated, the plaintiff's motion is denied and the defendants' cross-motion is granted.

This is an action by a former cadet at the United States Military Academy at West Point (the "Academy") seeking declaratory and injunctive relief determining that his separation from the Academy and his discharge from the United States Army were in violation of the due process requirements of the Fifth Amendment to the United States Constitution, setting aside the discharge approved by defendant Secretary of the Army; and ordering defendants to grant him a Bachelor of Science degree and a commission in the United States Army.

Plaintiff was originally scheduled to graduate from the Academy and to receive a commission in the United States Army in June, 1972. On or about June 2, 1972, an Academic Board convened at the Academy determined that plaintiff was deficient in conduct as a result of his having received demerits in excess of the total allowed for the

period from January to June, 1972 and recommended plaintiff's separation from the Academy. The recommendation was approved by defendant Secretary of the Army Froehlke who ordered plaintiff discharged on June 21, 1972. Plaintiff was processed out of the Academy on that date.

Plaintiff, alleging that the procedures employed by the Academic Board violated the due process requirements of the Fifth Amendment, commenced this action for injunctive and declaratory relief and in his original complaint sought reinstatement to the Academy. This Court, Frankel, D.J., relying heavily on Hagopian v. Knowlton, 346 F. Supp. 29 (S.D.N.Y. 1972), aff'd, 470 F.2d 20 (2d Cir. 1972), granted plaintiff a preliminary injunction requiring his reinstatement. Unlike the order entered in Hagopian, Judge Frankel stated that

"the injunction now to be entered will not limit the measure of plaintiff's reinstatement pending trial and final decision of this case. If any such limitations are to be imposed, they will follow only after specific application to the court upon reasonable notice."¹

Plaintiff returned to the Academy and repeated his senior year.

The defendants appealed from the order granting the preliminary injunction, but withdrew their appeal on consent after the decision handed down by the Court of Appeals in

Opinion of Ward, J.

Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972), which set forth minimal due process standards governing the dismissal of cadets from the Academy.

Following the Court of Appeals' decision in Hagopian, supra, the Academic Board was reconvened; and after a hearing purportedly complying with the due process requirements set forth in Hagopian, supra, the Board again recommended that plaintiff be dismissed. The Secretary of the Army approved this recommendation. As a result of these actions by defendants, plaintiff was not graduated from the Academy, and did not receive a degree or a commission in the United States Army. His discharge from the Army has not been effected pending application to this Court.

This Court granted defendants' motion to dismiss the complaint on grounds of mootness with leave to plaintiff to serve and file a supplementary complaint asserting any allegations plaintiff had concerning the proceedings subsequent to the entry of the preliminary injunction.² Plaintiff thereafter served and filed a supplementary complaint and the instant motions are addressed thereto. Since it is clear that the initial hearing granted to plaintiff did not comport with the requirements of due process as laid down in Hagopian, supra, this Court must determine whether the preliminary in-

Opinion of Ward, J.

junction entered herein barred a subsequent rehearing and, if it did not, whether that rehearing met due process standards.

Plaintiff argues that the terms of the preliminary injunction required the Academy to make an application to the Court before dismissing plaintiff following a rehearing. This Court does not so interpret the terms of the injunction quoted supra at page 2. The limitations referred to those imposed in Hagopian, supra, 346 F. Supp. 29, 35 (S.D.N.Y. '1972), aff'd, 470 F.2d 201 (2d Cir. 1972)--admission to athletic or extracurricular activities, avoidance of "controversy or conduct likely to lead to disruption, or interfere[nce] with the morale or discipline of the institution." The decision granting the preliminary injunction made no determination concerning the possibility of the Academy holding a second hearing pending trial. Any requirement that plaintiff not be dismissed without application to this Court was complied with by the defendants' motion of June 7, 1973 for an order dissolving the preliminary injunction and dismissing plaintiff's complaint as moot.

Plaintiff challenges the procedures employed at his second hearing on numerous due process grounds:

1. The Academic Board which recommended dismissal was not impartial;

2. No evidence was introduced regarding the offenses charged;

3. No opportunity was given to plaintiff to cross-examine witnesses regarding the offenses charged;

4. Plaintiff lacked knowledge of the elements of certain offenses;

5. The hearing was not timely;

6. On the question of retention, plaintiff was not given an opportunity to examine his file and rebut any adverse statements;

7. All witnesses whom plaintiff had requested were not brought before the Academic Board.

The Court will consider these contentions in light of the minimal standards of due process set forth by the Court of Appeals in Hagopian, supra. The Court quoting Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967), there stated:

"The Cadet must be apprised of the specific charges against him. He must be given an adequate opportunity to present his defense both from the point of view of time and the use of witnesses and other evidence. . . . The hearing may be procedurally informal and need not be adversarial." (Emphasis supplied in Hagopian, supra.) 470 F.2d at 210.

Of plaintiff's contentions that the Academic Board was not an impartial finder of the facts only his argument that every member of the Board was present and participated in the initial hearing which resulted in a recommendation that plaintiff be discharged merits discussion. Plaintiff challenged only one member of the Academic Board and that member was removed. Furthermore, it cannot be said that the Board was disqualified per se from reconsidering plaintiff's case because of its prior determination absent some showing of actual bias. As is recognized in Wasson v. Trowbridge, 382 F.2d 807, 813 (2d Cir. 1967), "prior official involvement in a case renders impartiality more difficult to maintain"; however, the Court also made clear that "[o]f course the closeness of Academy life and the manpower limitations of a Regiment may at times make it unduly burdensome or impossible to secure a panel wholly lacking previous contact with the events in issue, yet the hearing must proceed." Id. Nor has plaintiff shown that "members of the panel had had such prior contact with his case that they could be presumed to have been biased." The only prior contact which members of the panel have been shown to have had with plaintiff's case is the previous hearing. There is not even an allegation that any member of the panel initiated

or investigated any charges against plaintiff. Thus, there can be no presumption of bias. Although plaintiff is correct in stating that a judge does not sit in review of his own cases, a judge may sit on a case he had previously heard after reversal and remand. The procedure employed here³ seems analogous.

Plaintiff appears to argue that he was not apprised of the evidence against him as to certain of the specific delinquency reports and that there was a presumption of correctness accorded the delinquency reports. In reviewing the delinquency reports, the Court finds that the nature of the specific violations was clearly and explicitly set forth in a manner which apprised plaintiff of the charges against him.

The Court also concludes that the so-called presumption of correctness accorded to delinquency reports does not violate due process so long as the cadet charged is given an opportunity at some point to rebut the charges.

This is analogous to the business records exception to the hearsay rule which permits records kept in the regular course of business to be admitted into evidence for the purpose of proving the truth of the matter asserted therein. Such records are admissible without the testimony of the person who has knowledge of the facts recorded. In like

fashion, delinquency reports are admissible for the purpose of establishing the truth of the statements they contain, and due process is not violated so long as the cadet is given the opportunity to show that the reports lack trustworthiness or are in fact erroneous. Plaintiff was given such an opportunity prior to his dismissal.

Under procedures in effect at the Academy, a cadet could provide a written explanation at the time he was notified of the report, could request reconsideration, could appeal to superior authorities and, following the decision in Hagopian, supra, could rebut the charges at a hearing prior to dismissal.

Plaintiff's lack of memory regarding certain of the charges did not require the Academy to come forward with additional proof including testimony of the charging officers and other witnesses so long as plaintiff could have called witnesses on his own behalf. Moreover, plaintiff was apprised of the reporting officers' identities. Although he could have requested that they be called as witnesses, plaintiff did not do so. It, therefore, appears to the Court that this portion of the procedure followed at plaintiff's second hearing met the requirement of Hagopian, supra, at 211, that the cadet be given an opportunity "to appear and contest the factual basis of demerits previously awarded."

Opinion of Ward, J.

Plaintiff also argues that because this second hearing on his dismissal was held more than nine months after some of the demerits were initially awarded he was denied the opportunity to contest the charges because he did not remember the details of some of the offenses and because witnesses who may have testified in his behalf were no longer available. In making this argument, plaintiff relies heavily on the following statement in Hagopian, supra:

"Since the demerit period roughly coincides with the relatively short duration of a college semester, the opportunity to appear and contest the factual basis of demerits previously awarded without a hearing would not be lost to the memory of either the cadet or available witnesses."
470 F.2d at 211.

While an initial hearing held nine months after the award of individual demerits might be untimely, such is not the situation presented by the instant case. The initial proceeding held here did in fact take place "within the relatively short duration of a college semester." Id. Since that time the matter at issue has been the subject of litigation. Plaintiff, therefore, had timely notice of the initial proceedings so as to enable him to preserve his recollection of the factual basis of demerits previously awarded in order that the data would not be lost to his memory and to communicate with potential witnesses so that they, too, would

not let the events fade from memory. It is clear from the record before the Court that plaintiff's lack of memory of the demerits as to which he raises this argument occurred prior to the first hearing "during the relatively short duration of a college semester." Id.

Furthermore, plaintiff's argument that four witnesses who he wanted to call on his behalf were no longer available is unsubstantiated. Only one of these witnesses, Lieutenant Dull, would have testified on the demerit phase of the hearing. The demerits as to which he would have testified were in fact removed so that his unavailability could not possibly be held to have prejudiced plaintiff.

In addition, plaintiff argues that Lieutenant Dull and three others were desired for their testimony regarding plaintiff's potential for retention and that the Academy should have borne the burden of producing them. One of these witnesses, Lieutenant Kruger did testify.⁴

Hagopian, supra, requires that plaintiff have an opportunity to present witnesses; it does not set forth any requirement that the Academy arrange for and bear the expense of their attendance. Since plaintiff argues only the latter proposition, he fails to state a claim. There is no evidence nor does plaintiff assert that the Academy hindered or prevented in any other way his presenting these witnesses.

Plaintiff's final argument is that on the question of retention, he was not given an opportunity to examine his file and rebut any adverse statements contained therein. Such a demand was specifically rejected in Hagopian, supra. There, Cadet Hagopian demanded the right to inspect the recommendations of his Tactical Officer and Regimental Commander regarding separation, which were before the Academic Board when it made its decision. In rejecting this contention, the Court of Appeals stated:

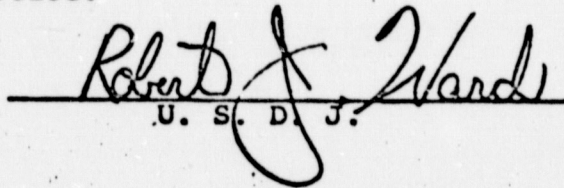
"[W]e agree with the Court's conclusion in Wasson that '[p]articularly on the question of [his] fitness to remain a Cadet, he is not entitled to see the confidential opinions of members of the faculty,' 382 F.2d 813."
470 F.2d at 212.

Thus, plaintiff has no right to examine his file for adverse opinions.

For the foregoing reasons, plaintiff's motion for summary judgment is denied and defendants' cross-motion for summary judgment dismissing plaintiff's supplementary complaint is granted.

Settle judgment on notice.

Dated: February 14, 1974


U. S. D. J.

Opinion of Ward, J.

NOTES

- 1 Opinion, August 3, 1972 at p. 8.
- 2 Memo Endorsed, September 5, 1973, on defendants' Notice of Motion dated June 7, 1973. See also, Memo Endorsed, September 5, 1973, on plaintiff's Notice of Cross-Motion dated July 2, 1973.
- 3 Although not dispositive, the fact that cadets Hagopian and Jaremko, whose cases have run a course parallel to plaintiff's, were reinstated after re-hearings lends support to finding that the Academic Board was not biased per se.
- 4 In this regard it should be noted that plaintiff did, in fact, present nine witnesses who testified as to his potential for retention. Furthermore, plaintiff was given the opportunity to present written statements from the three absent witnesses which he refused to do. Of course, if plaintiff had a right to have the Academy produce these witnesses, these factors are irrelevant.

COMPLAINT

A-16

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
STEVEN F. BROWN,

Plaintiff,

-against-

MAJOR GENERAL WILLIAM KNOWLTON,
Superintendent, United States Military
Academy, BRIGADIER GENERAL SAMUEL WALKER,
Commandant, United States Military
Academy, and ROBERT F. FROEHLKE,
Secretary of the Army,

Defendants.
-----x

COMPLAINT

Plaintiff, through his attorneys, alleges:

1. This is a civil action brought by the plaintiff to obtain declaratory and injunctive relief determining that plaintiff's separation from the United States Military Academy and his discharge from the United States Army are illegal and ordering his return to the United States Military Academy.

2. Jurisdiction is conferred upon this Court pursuant to Title 28 U.S. Code §§ 1331, 1361, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand (\$10,000.00) Dollars.

PARTIES

4. The plaintiff is a citizen of the United States and is currently residing in the State of Massachusetts.

5. Defendants Major General William Knowlton and Brigadier General Samuel Walker are respectively Superintendent and Commandant of the United States Military Academy, West Point, New York. They are the senior officers in charge of the operations of the Military Academy at West Point and as such are the officers with ultimate supervision and direction of the plaintiff herein. They are sued herein both personally and in their official capacities.

6. The defendant Robert F. Froehlke is the Secretary of the Army of the United States. He is sued herein both personally and in his official capacity.

CAUSE OF ACTION

7. Plaintiff herein has virtually completed his fourth year as a cadet at the United States Military Academy.

8. On or about June 2, 1972 the plaintiff herein was determined by an Academic Board convened at the Academy to be deficient in conduct for receiving a total number of demerits in excess of the amount allowed for the period January through

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Complaint

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June, 1972. On said date the Academic Board recommended that he be separated from the United States Military Academy. On or about June 3, 1972 plaintiff was processed out of the United States Military Academy.

9. The recommendation of the Academic Board was referred to Secretary of the Army, Froehlke, one of the defendants herein, for approval. On June 21, 1972 the Secretary of the Army acted on the referral and discharged plaintiff.

10. The action of the Academic Board was based upon written reports alleging that the plaintiff herein was deficient in conduct on numerous occasions in that he had violated various regulations and orders.

11. Plaintiff herein submitted to the Academic Board written statements contesting the factual accuracy of at least two of these reports. With regard to a third report, plaintiff was not given notice sufficient to advise him of the charges against him. A determination in favor of the plaintiff on these reports would have resulted in plaintiff's total number of demerits being less than the maximum allowed for the relevant period. Had plaintiff had the opportunity to properly

Complaint

defend against the charges he would not have been recommended for separation from the Military Academy and would not have been discharged from the Army.

12. Prior to this date another Academic Board was convened to separate him from the United States Military Academy for academic failure. This Board was illegal and a denial of due process in that the Regulations for United States Military Academy § 5.18 gives a cadet the right to re-examination where he fails one subject.

13. The procedures followed by the United States Military Academy in separating plaintiff from the United States Military Academy and discharging him from the army denied plaintiff due process of law in that:

(a) Plaintiff was not provided an opportunity to be present at the meeting of the Academic Boards at which his delinquency record was considered and the charges against him determined.

(b) Plaintiff was not provided an opportunity to present his own personal testimony before the Boards nor the testimony of any witnesses on his behalf.

Complaint

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(c) Plaintiff was not permitted to cross-examine nor in any way question the persons whose reports had constituted the allegations and evidence against plaintiff before the Academic Board.

(d) Plaintiff was not provided with the opportunity of having counsel, or a legally trained person, appear before the Academic Board on his behalf, nor submit arguments to the Academic Board in writing or otherwise.

(e) The plaintiff was not provided the opportunity of consulting with counsel or other legally trained persons in any manner regarding the charges and possible actions pending against him although counsel and/or other legally trained personnel were available at the Military Academy.

(f) The Academic Board had before it for consideration the reports and recommendations of plaintiff's Company Tactical Officer and Regimental Commander. Plaintiff was not provided with the opportunity of inspecting said reports and recommendations. Nor was plaintiff informed in any manner or to any degree of the contents of said reports and recommendations. Plaintiff was thereby deprived of the opportunity to respond in any manner to said reports and recommendations.

(g) Plaintiff was not informed in any manner whether

or not the Academic Board had before it any information or evidence against plaintiff other than the aforesaid reports for delinquency in conduct and the aforesaid reports and recommendations by said Company Tactical Officer and Regimental Commander. Plaintiff therefore did not have the opportunity to respond to such additional information and evidence against him which may have been before the Board.

(h) The plaintiff was not informed in any manner of the basis upon which the Academic Board reached its determination. The plaintiff was thereby deprived of the opportunity of protesting to the Board or to any other authority in any manner the Academic Board's determination, and was thereby deprived of the opportunity to submit to said Board or to any other authority any additional statement, argument or additional evidence relevant to the Board's determination.

(i) The Army did not follow its own regulations in recommending separation from the service on the basis of academic delinquency.

14. As a direct and immediate consequence of the Board's determination, the plaintiff was processed out of the Military Academy on June 21, 1972.

Complaint

15. Unless plaintiff is reinstated at the Academy forthwith he will fall behind the training scheduled for the present senior class. If it is determined that he is required to repeat his senior year he will thus not be able to graduate in June of 1973. The failure to reinstate plaintiff may thus result in his falling two years behind his graduating class.

16. As a direct and immediate consequence of the determination by the Academic Board, plaintiff will lose all meaningful opportunity to make a career in the United States Army.

17. As a direct and immediate consequence of the determination by the Academic Board, plaintiff will be stigmatized to his considerable detriment, in or out of the Armed Forces.

18. As a direct and immediate consequence of any action by the Secretary of the Army, defendant herein, approving the determination of the Academic Board, the plaintiff will not graduate from West Point and will not receive a college degree.

WHEREFORE, plaintiff prays that the following relief be granted:

1. That this Court issue a declaratory judgment declaring that the procedures by which it was determined that plaintiff should be separated from the Military Academy violated due process of law, as provided by the Fifth Amendment to the United States Constitution;

2. That this Court issue a permanent injunction enjoining the defendants from restraining or in any way interfering with or impeding plaintiff's resumption and completion of his full training and graduation from the United States Military Academy until such time as a hearing is held upon the charges of delinquency in conduct which comports with the requirements of due process of law;

3. That this Court set aside the discharge approved by the Secretary of the Army, Froehlke, until such time as a proper hearing is held, in a manner which complies with the requirements of due process of law;

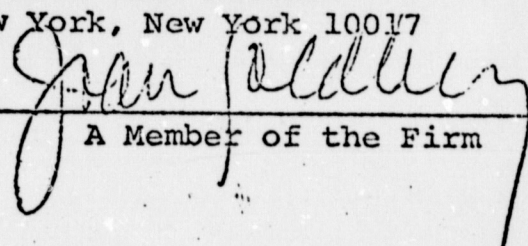
Complaint

4. That the Court issue a temporary restraining order ordering the defendants and their subordinates to permit plaintiff's immediate and normal resumption of his training at the United States Military Academy.

Dated: July 25, 1972.

RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

By


A Member of the Firm

ORDER TO SHOW CAUSE
and TEMPORARY RESTRAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Title Same)

Upon the annexed copy of the complaint and the affidavit of JOAN GOLDBERG, ESQ., sworn to the 25th day of July, 1972, and for good cause showing, it is

ORDERED, that the defendants show cause before this Court, at a term for motions thereof, to be held at the United States Courthouse, Foley Square, Room 110, on the 1st day of August, 1972, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why a preliminary injunction, pursuant to Federal Rules of Civil Procedure, 65(a), should not be issued enjoining and requiring defendants MAJOR GENERAL WILLIAM KNOWLTON, Superintendent, United States Military Academy, BRIGADIER GENERAL SAMUEL WALKER, Commandant, United States Military Academy, and ROBERT F. FROEHLKE, Secretary of the Army, their associates, servants, employees and all persons in active concert and participation with them, pending the final hearing and determination of this action, to reinstate the plaintiff herein in the United States Military Academy, West Point, N. Y. and to set aside the plaintiff's discharge; and

Order to Show Cause
and Temporary Restraint

ORDERED, that service of a copy of this Order, together with a copy of the complaint and the papers hereto attached on the United States Attorney, Southern District of New York on or before the 27th day of July, 1972 by 12 noon o'clock be deemed sufficient service upon the defendants herein.

Dated: New York, N. Y.
July 27, 1972.

Issued at 9:50 A.M.

s/ Edward C. McLean
U.S.D.J.

Defendant's attorney has agreed that in the event that the court grants relief to plaintiff after hearing this motion defendants will not claim that plaintiff is prejudiced in any way by his failure to present himself at the USMA prior to the determination of this motion.

July 27, 1972

Edward C. McLean
USDJ

AFFIDAVIT OF JOAN GOLDBERG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STEVEN F. BROWN, :

Plaintiff, :

-against- :

MAJOR GENERAL WILLIAM KNOWLTON, :
Superintendent, United States Military :
Academy; BRIGADIER GENERAL SAMUEL WALKER, :
Commandant, United States Military Academy, :
and ROBERT F. FROEHLKE, Secretary of the :
Army, :

Defendants. :
-----X

AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JOAN GOLDBERG, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in this Court and a member of the firm of Rabinowitz, Boudin & Standard, attorneys for the plaintiff in the within action.

2. Plaintiff herein, Steven F. Brown, is presently residing at 12416 Skylark Lane, Bowie, Maryland. Because of the necessity for requesting immediate relief, plaintiff is unable to personally execute an affidavit in support of the instant application. This affidavit is made on information and belief by his attorney.

3. This affidavit seeks a temporary restraining order requiring the Secretary of the Army to set aside the order separating plaintiff from the United States Military Academy

Affidavit of Joan Goldberg

(hereinafter "USMA") and discharging him from the Army, and ordering the Superintendent of the USMA, West Point, New York, to permit Mr. Brown to join the senior class at the Military Academy pending determination by this Court of whether the procedures separating Brown were unlawful as a violation of the due process clause of the Fifth Amendment to the United States Constitution.

4. Mr. Brown was, until June 21, 1972,^{1/} a senior at West Point and a member of the Armed Forces. He had completed his fourth year of training and study at the Academy and should have graduated with his class on June 8, 1972. However, prior to that date, a Commandant's Board was held to determine whether he should be separated from USMA for deficiency in conduct and said Board recommended that Mr. Brown repeat his fourth year at the Academy.^{2/} If this recommendation is held to be illegal, then Mr. Brown must be reinstated in order to receive his degree and commission as a United States Army officer. Failure to have the recommendation reversed would leave Mr. Brown two

^{1/} Plaintiff was separated from the USMA and discharged from the Army on that date. He had no additional service obligation.

^{2/} Said action is alleged to be beyond the power of the Board. Nevertheless, plaintiff must be readmitted to rejoin the present senior class by August 1, 1972 in the event this recommendation is upheld.

Affidavit of Joan Goldberg

years behind if the court does not order his reinstatement at this time.

5. Subsequent to the Commandant's Board recommendation that Brown not be separated from USMA, a board of officers was convened at the Academy (hereinafter referred to as the "Academic Board") to determine whether he should be separated for academic deficiency. Contrary to Regulation USMA § 5.18, this Board recommended that Mr. Brown be separated from the Academy for failure in a single academic subject. There is no appeal from this decision.

6. On or about June 2, 1972, a subsequent Academic Board was convened to determine whether Mr. Brown should be separated for deficiency in conduct. This Board recommended that he be separated and Mr. Brown was separated on June 21, 1972. It is the procedure by which these Boards acted that is the subject of the complaint.

7. An Academic Board may be convened in the discretion of the Commandant after recommendation by a cadet's Tactical Officer when a cadet is reported to have exceeded his total allowance for demerits in an academic period, or where a cadet has failed more than one academic subject. (This latter will be discussed infra, ¶ 12.

A demerit is a mark in conduct, U.S.M.A. Disciplinary System S.O.P., p. 1 (hereinafter "S.O.P."). A

Affidavit of Joan Goldberg

special form is used to report delinquencies, Form 2-1 (S.O.P. p.34). The Tactical Officer reviews reports received each day and either awards demerits on the basis of the report or, in the case of serious violations, a Board is convened to hear charges and to make the award.^{3/} Pursuant to regulation, when a cadet exceeds his monthly allowance and when he exceeds the total demerit allowance for the period, the Tactical Officer is required to interview the cadet to determine whether the awards were fair and just and recommend whether a Board should be convened to determine whether he should be separated from USMA.

If an Academic Board is convened and decides that the cadet has exceeded his total allowance, he may be separated from the Academy. The cadet has no right to appear before the Academic Board; no right to present witnesses in his behalf; no right to cross-examine the reporting officers or even to submit information other than written reports submitted at the time the demerits were awarded. The cadet has no right

^{3/} Many of plaintiff's demerits are for minor offenses. There is no right to a hearing on the merits, either prior to the award or where the cadet appeals from the award. Moreover, the Tactical Officer often reports the violation, makes the award and reconsiders his own determination to decide if it was just. In this case, the Tactical Officer was responsible for five reports resulting in 24 demerits.

to counsel before the Board nor does he have the right to consult with counsel to aid in preparation of his defense. The Board is not required to set forth the basis for its decision, nor is there an appeal from this decision.

8. The facts are as follows:

On March 18, 1972 Brown was involved in a one-car accident when he was not authorized to be off post. A Separation Board was convened by the Superintendent to determine whether his retention was desirable. He was moved from his barracks to what is known as the Boarders' Ward. At that time he had only 35 demerits. During his first three and one-half years at the USMA, Brown never exceeded nor even approached the maximum allowable demerits.

From March 18 until the end of May, Brown received a total of 121 demerits. The total allowed for the entire academic period (January-June) was 102 demerits.

Brown sought to explain certain of the charges and to contest the accuracy of other reports. On April 25, 1972, he was awarded five demerits because his room was not in prescribed condition. At 8:30 A.M., when Brown was sleeping, an officer came into inspect his room and charged him with this offense. At 9 A.M. the officer returned and found Brown still asleep. He then received ten demerits for direct disobedience, intentional in that he failed to awaken. This award indicates how the demerit procedure can be abused. Brown was obviously penalized twice for the same offense. Additionally, he had two defenses to this award - first, that the inspection was

Affidavit of Joan Goldberg

not in accord with regulations for Boarders' Ward and, second, that the award of demerits for the second offense was not in accordance with regulations.

Brown, on May 6, 1972, was awarded 15 demerits for gross lack of judgment in submitting a poor research paper. On or about May 30, 1972, he was awarded 45 demerits for missing classes. In order to defend against this last offense he asked for a list of the dates on which the classes were missed but it was never made available to him.

During this period, Brown had three Board hearings brought against him^{4/} and he missed many classes. Absences to attend Board hearings are excused, yet he could not prove that the absences charged were excused because he was not given the dates of alleged absences.

9. The Aptitude Board hearing was scheduled for May 28, 1972 and postponed to June 2. On June 1, 1972, Brown asked Major Jerome Camello, the Assistant S-1, for copies of all the demerits lodged against him in order to submit a written defense to the charges. Major Camello advised that he would make copies, yet when Brown returned for them he was told he could not have them by order of the Deputy Commandant of the USMA.

4/ The first Board hearing stemmed from the automobile accident; the second was for gross lack of judgment, and the third was for missing classes. Two Academic Boards were convened without his presence - the first ordered him dismissed for poor academic standing in that he failed English, (he passed the exam, but was failed for excessive absences) which violate § 5.18 of Regulations for USMA which gives a cadet absolute right to re-examination where he fails a single course. The second Board was for deficiency in conduct.

ONLY COPY AVAILABLE

10. Brown went to Captain William F. Belcher and requested his help in defending against the Academic Board hearing and was told by Captain Belcher that he was given specific instructions not to advise him on the merits of the Aptitude Board hearing.

Deponent spoke to Captain Belcher who acknowledged that this was so. When asked why he did not suggest that Brown retain civilian counsel, Captain Belcher stated that it was covered by the specific instructions from the Colonel.

11. It is believed that at least three of the delinquency awards to Mr. Brown were as a matter of law insufficient. If these demerits were not awarded Brown would not be in excess of the allowance.

(a) Brown was awarded a total of 15 demerits when he was sleeping, ten of these demerits for intentional disobedience. Because Brown did not have the opportunity to consult with counsel, he did not bring this claim of legal insufficiency to the attention of the Academic Board, nor could he have effectively argued the merits of the legal claim without counsel.

(b) The delinquency report for gross lack of judgment for handing in a poor term paper is arbitrary and capricious. The "award" for handing in an inadequate term paper is either a failing grade or a requirement that the

paper be resubmitted. Counsel could have effectively argued the merits of this claim.

(c) The report for missing classes could not be defended because Brown was never given the dates of the classes alleged to have been missed. He was thus not given sufficient notice of this charge to comply with the requirements of due process.

12. The decision of the Academic Board recommending separation for failure in a single academic subject, in violation of USMA Regulations was a result of the lack of counsel. If Brown had had opportunity to consult with counsel, the error of law could have been raised as a defense.

13. By its action, the Academic Board separated Brown from the USMA which caused him serious and irreparable injury in that he was deprived of a college degree and a commission in the United States Army. Even if he wins this motion, he may have been deprived of the opportunity to have a military career, and this was the result of a procedure that violates the Fifth Amendment to the United States Constitution, in that -

(a) He did not receive adequate notice of the charges against him to prepare a defense.

(b) He had no opportunity to be present at the Board meeting nor to present witnesses to the Board.

(c) He had no opportunity to cross-examine report-

Affidavit of Joan Goldberg

ing officers.

(d) He was denied opportunity to consult with counsel.

(e) He was denied opportunity to have counsel appear in his behalf before the Board.

(f) He had no opportunity to inspect and respond to reports and recommendations filed with the Board.

(g) He was not advised of the basis of the decision.

(h) Tactical Officer acted as prosecutor, judge and reviewing authority on five occasions resulting in 24 demerits, a merger of functions which is a violation of law.

14. The consequences to Brown in being separated from service are serious and irreparable.

15. The procedures followed by the USMA do not satisfy due process requirement for a fair hearing.

16. There is a likelihood of success in this litigation.

17. This order is brought on by order to show cause because, unless palintiff is permitted to rejoin the senior class on August 1, he may be delayed still an additional year in graduating even if he wins this action.

18. No previous application for the relief sought

Affidavit of Joan Goldberg

herein has been made to any other court.

*19. Notice was given to Asst US Attorney Reilly
by Connors, a copy of the order, a plaintiff's complaint was given*

WHEREFORE, deponent respectfully prays that the
defendants be required to readmit plaintiff to the USMA and
reinstate him in the United States Army pending determination
of this action.

Joan Goldberg
Joan Goldberg

Sworn to before me this

25th day of July, 1972.

Marlene Connor

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1974

AFFIDAVIT OF WILLIAM F. BELCHER

A-37

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF ORANGE)

WILLIAM F. BELCHER, being first duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of Florida and a Captain on active duty in the Judge Advocate General's Corps of the United States Army.
2. From August 1969 until the present time I have been assigned to the staff and faculty of the United States Military Academy, West Point, New York, in the Department of Law and Office of the Staff Judge Advocate as an Assistant Professor of Law and Assistant Staff Judge Advocate.
3. In late March 1972 I was appointed to represent Cadet Steven F. Brown in connection with administrative separation proceedings brought against him as a result of disciplinary infractions alleged to have been committed on the evening of 18 March 1972. Specifically, these infractions were related to an automobile accident involving Cadet Brown which occurred a few miles from the Military Academy. On 6 April 1972 the Superintendent convened a Board of Officers pursuant to paragraph 16.03, Regulations for USMA, and Army Regulation 15-6, to determine whether

the alleged infractions related to the accident exhibited habits or traits of character which appeared to render Cadet Brown's retention at the Military Academy undesirable. My direct representation of Cadet Brown was in connection with these proceedings. The Board of Officers conducted its hearing on 24, 25 and 26 April 1972. On 26 April the Board recommended that Cadet Brown not be separated from the Academy, recommending a lesser punishment.

On or about 11 April 1972, while Cadet Brown and I were preparing for the 24 April Board hearing pertaining to the allegation of "undesirable habits or traits of character," we learned that his Company Tactical Officer and Regimental Commander in the Tactical Department were initiating additional separation proceedings against him for alleged deficiencies in "leadership" or "aptitude for the service." On that date, in anticipation of Aptitude Board proceedings, I assisted Cadet Brown in the preparation of a letter to the Commandant of Cadets requesting that he be accorded due process of law at any such Board hearing subsequently convened by the Commandant to determine whether he should be separated from the Academy for deficiency in aptitude for the service (i.e., leadership). Specifically, it was requested that with respect to any such Aptitude Board hearing, that Cadet Brown be given:

- a. notice of any specific acts of misconduct which would be consid-

ered by the Board;

b. the opportunity to attend the hearing to confront and cross-examine the witnesses who would be called to testify against him.

These requests were denied by the Commandant "insofar as they differ from established procedures."

I felt particularly compelled to assist Cadet Brown in any way that I could in connection with the new separation proceedings for alleged deficiency in aptitude for the service because I believed that these proceedings, in large measure, had also been prompted by the facts and circumstances surrounding the automobile accident. This belief was reinforced by the fact that at that time there were at least forty (40) seniors in Cadet Brown's class who had aptitude or leadership ratings lower than his and against whom aptitude separation proceedings were not initiated. In addition, prior to any hearing having been conducted by an "undesirable habits or traits" Board or an Aptitude Board, both the Commandant of Cadets and Cadet Brown's Regimental Commander had taken official positions in writing that he should be separated, even though the Commandant of Cadets would be the authority to subsequently appoint an Aptitude Board consisting of subordinate officers in his department to advise him as to whether Cadet Brown should be separated.

Comments made to me by my superiors in the Department of

Affidavit of William F. Belcher

Law during this time period made it clear to me that they knew I had assisted Cadet Brown in the preparation of the letter to the Commandant and letters to various Congressmen.

4. On 27 April 1972, the day following the "habits and traits" Board's recommendation that Cadet Brown not be separated, I was told by Colonel Thomas C. Oldham, the Staff Judge Advocate, that the Academy's policy was that cadets were not entitled to counsel or legal assistance in connection with separations based on deficiency in leadership or aptitude for the service. He then stated that I had been given considerable latitude up until that time because of my representation of Cadet Brown in the "habits and traits" Board proceedings. He then told me that from that date I was to refrain from advising, assisting or counseling Cadet Brown with regard to his possible separation for deficiency in aptitude for the service. He explained that I was not to discuss the merits of the case with him nor was I to advise him as to what action he should take nor was I to assist him in the preparation of any correspondence. He did state, however, that he would permit me to explain procedures to Cadet Brown.

On the following morning, 28 April 1972, I went back to the Colonel and stated that it was my understanding, based on the previous day's conversation, that I was "ordered and directed" to refrain from assisting Cadet Brown in the aptitude separation proceedings pending against

him. The Colonel confirmed my understanding subject only to the qualification that I could explain procedures. I then told him that in my opinion Cadet Brown was not being dealt with fairly and that he needed the assistance and advice of counsel. I further stated that I had given the matter much consideration and that if I were ordered not to help him then I would have to advise him to seek the services of civilian counsel. The Colonel then directed me not to advise Cadet Brown as to whether or not he needed civilian counsel, stating that Cadet Brown and his parents should make that determination and that he was not going to have me "embroiling the Academy in litigation."

5. During the months of April and May, while I was working with Cadet Brown on the "habits and traits" Board and its review, I learned that Cadet Brown was receiving demerits for an unusually high number of disciplinary infractions under the Cadet Disciplinary System, administered by the Department of Tactics under the direction of the Commandant of Cadets. It seemed as though he was charged with some new infraction nearly every time I spoke with him. On at least one occasion during this period I was told by the Staff Judge Advocate that I was not permitted to advise or otherwise assist him in defending against alleged disciplinary offenses. It is the frequently stated policy of the Academy that Law Department personnel refrain from interfering or becoming involved with "official actions" of the Department of Tactics.

6. In mid or late May 1972 I appeared as a witness on behalf of

Cadet Brown before a Category II Aptitude Board convened by the Commandant of Cadets to determine whether Cadet Brown should be separated for deficiency in leadership or aptitude for the service. This Aptitude Board consisted of five (5) officers from the Department of Tactics and was convened following the initiation of action described in paragraph 2, above. The President of the Board advised me that the purpose of the hearing was to determine whether Cadet Brown was deficient in aptitude for the service and should be separated. After instructing me that the hearing was not "legalistic", I was given the opportunity of offering personal testimony on Cadet Brown's behalf. I appeared testified solely as a witness and not as Cadet Brown's legal representative, and so stated to the Board. My testimony essentially consisted of relating certain factual matters, of which I had personal knowledge, to the Board. The Board considered evidence relating to the automobile accident of 18 March 1972.

The Board determined that Cadet Brown was deficient in aptitude for the service (i. e., leadership) and recommended to its appointing authority, the Commandant of Cadets, that he be separated. The Commandant concurred in this recommendation and forwarded the case to the Academic Board with his recommendation that Cadet Brown be separated.

7. On or about 27 May 1972 Cadet Brown was informed that he had exceeded the total allowance of demerits for the demerit period ending 7 June

1972 and that his case would be forwarded to the Academic Board by the Department of Tactics, for a final determination as to whether he should be separated for deficiency in conduct (i. e., excess demerits). On 31 May 1972 the Academic Board met to take action on the Brown case but deferred action until 3 June 1972.

On 2 June 1972 Cadet Brown traveled from his home in Maryland to West Point, New York, so that I could assist him in the preparation of a written statement containing, among other things, matters of defense to various alleged delinquencies upon which awards of demerits had been based.

I suggested to Cadet Brown that he go to the offices of the Department of Tactics and request copies of all delinquency reports which were to be considered by the Academic Board and upon which any separation for deficiency in conduct would be based. These are the accusatorial reports containing the factual allegation or "charge" of a particular delinquency or disciplinary offense. Without access to these reports it is impossible to submit matters in defense or rebuttal. This is particularly true in the case of a large number of incidents spanning a period of months. Cadet Brown returned to my office from the Department of Tactics and informed me that the Assistant S-1, Major Jerome J. Comello, had refused to give him copies of the reports on the basis of instructions from his superior in the Department of Tactics, the Deputy Commandant of Cadets. At that

Affidavit of William F. Belcher

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point I was particularly concerned over a recent incident involving alleged unauthorized absences from English classes and for which an extremely high number of demerits had been awarded to Cadet Brown. Although Cadet Brown was advised of the specific dates of the absences at some earlier date he did not have a record of them at this time for use in submitting a written statement to the Academic Board. Because the Tactical Department would not give Cadet Brown copies of the reports, I telephoned his English instructor, Lieutenant Colonel Herman V. Ivey, and asked him for the dates upon which Cadet Brown had missed his class. He said that he would provide me with the dates but that he would have to first refer to his records which were in another office. He said that he would call me back shortly. Rather than calling me, however, the English Department contacted the Department of Tactics and told them that I was seeking the information. The Department of Tactics then called Colonel Oldham who came to my office and saw that I was with Cadet Brown. He then called me out of my office and asked what Brown was doing there and why I had been asking questions around the English Department. I told him that I was attempting to help Cadet Brown put a statement together for submission to the Academic Board. He told me that cadets were not entitled to the assistance of counsel in such matters and that I was not to further

Affidavit of William F. Belcher

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assist Cadet Brown with respect to the separation proceedings based upon deficiencies in conduct (i.e., excess demerits) or aptitude (i.e., leadership). Brown then left my office and no further statement was submitted to the Academic Board. Lieutenant Colonel Ivey never called me back.

8. On the following day, 3 June 1972, the Academic Board determined that Cadet Brown should be separated.

William F. Belcher

WILLIAM F. BELCHER

Sworn and subscribed to before me
this 31st day of July, 1972.

Arnold F. Feldman

ARNOLD F. FELDMAN
Notary Public State of New York
Appointed in Westchester County
Commission Expires Mar. 30, 1973

A-46

(Same Title)

DANIEL W. SHIMEK, being duly sworn, deposes and
says:

2. Brown was separated from the Academy and then discharged from the United States Army, effective June 21, 1971. Exhibit A hereto. He received an honorable discharge.

72-2577

Ibid. He seeks in this action to be reinstated on the ground that there were procedural irregularities involved in his separation from the Academy and his honorable discharge from the Army. Specifically, Brown contests the awarding of 10 demerits on April 25, 1972 (Attorney's affidavit, pp. 4-5, Complaint, ¶11), the awarding of 15 demerits on May 16, 1972 (Attorney's affidavit, p. 5, Complaint ¶11), and the awarding of 45 demerits on May 23, 1968 (Attorney's affidavit, pp. 5-6, Complaint, ¶11). Review of Brown's conduct file with respect to each of the contested incidents supports the conclusion that due process as that term is construed for Military Academy disciplinary proceedings was observed for each of those three incidents, that there can be no dispute on the facts as to the procedures followed, that no evidentiary hearing is required and that plaintiff can not establish probability of success at the trial on the merits.

3. On April 26, 1972, Brown received a delinquency report which alleged that he had failed to comply with a direct order. Exhibit B hereto. He then submitted in writing an Explanation of Report. Exhibit C. A Commandant's Board of three officers was convened, heard Brown's

Affidavit of Daniel W. Shimek

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oral testimony, and prepared a written decision. Exhibit D. The written decision followed, in the main, Brown's explanation. Brown received 10 demerits. Brown did not, at the time, ask for a reconsideration of the award, although the applicable regulations gave him that right. Regulations for the United States Corps of Cadets (herein "Regs") ¶412. That Brown should have recognized the gravity of his situation on that date is brought home by the memorandum whose receipt he acknowledged, Exhibit E hereto, and which memorandum is a part of the record on the April 26 delinquency.

4. On May 16, 1972, Brown received a delinquency report which alleged that he had shown gross lack of judgment in failing to rewrite unsatisfactory paper but instead resubmitting original paper with annotations which annotations included a remark derogatory to the instructor who had first graded the paper. Exhibit F hereto. Again pursuant to the Regulations (Regs. ¶405) submitted a written Explanation^{of}/Report. Exhibit G hereto. A Commandant's Board of three officers was convened, considered the written memorandum submitted by Brown's instructor (Exhibit H hereto), heard Brown's oral testimony and prepared a written decision.

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Exhibit I hereto. Brown received 15 demerits. A warning analogous to Exhibit E is also a part of the May 16 delinquency hearing. Exhibit J hereto.

5. On May 23, 1972, Brown received a delinquency report which alleged that he had shown gross lack of judgment in being absent without leave from the English classes given on the 13, 19, 21 and 27 of April, 1972, and 1, 3, 9, 11 and 15 of May, 1972. Although that delinquency report is not in Brown's conduct file, Brown's written Explanation of Report dated May 24, 1972 is in the file. Exhibit K hereto. Exhibit K clearly refutes the contention by plaintiff's attorney (at p. 5 of the attorney's affidavit and ¶11 of the complaint) that Brown could not defend against the allegations of the missed classes "because he was not given the dates of the alleged absences." Not only does Exhibit K demonstrate beyond cavil that Brown did have a list of the alleged absences before the May 26, 1972, hearing, it also shows that Brown admitted that he did not attend the listed classes and also that his failure to attend was unexcused. A Commandant's Board of three officers was convened, heard Brown's oral testimony, and prepared a written decision.

72-2577

Exhibit L hereto. It is noteworthy that these unexcused absences straddled the April 28th hearing on Brown's earlier failure to get out of bed where Brown had received the Exhibit E warning. That note gives further weight and a humanitarian cast to the Board's finding that Brown showed "Gross lack of judgment" by "making no effort to correct the situation or seek help."

6. On May 27, 1972, Brown acknowledged the notice that he was "being considered by the Academic Board for possible separation for deficiency in conduct." Exhibit M hereto. Brown was notified of each demerit received during the reporting period and given the right to submit written reconsiderations of any of the delinquency reports at that time. Exhibit N hereto. He challenged in writing the 10 demerit award dated April 25, 1972 (Exhibit O hereto) and the 45 demerit award dated May 23, 1972. Exhibit P hereto. Those two awards had also been challenged when received (paras. 3, 5 supra). The rest were not challenged.*

* I have gone through the conduct file. All demerit awards which Brown conceded were correct when given are marked with an asterisk on Exhibit Q hereto. They total 61 demerits.

Affidavit of Daniel W. Shimek

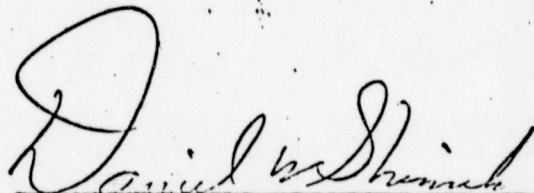
He also submitted other writings to the Board. Exhibit R hereto. The requests for reconsideration were each rejected. Written explanations were afforded Brown. Exhibits S, T hereto.

7. On June 3, 1972, the Academic Board found Brown to be deficient in Conduct and EN 402 (English) and recommended that he be separated from the Academy. (Exhibit U hereto). Their finding on Conduct was made on a review of Brown's conduct file and the written papers submitted by him. He did not receive a hearing either in person or by counsel. The decision on EN 402 was a decision that Brown failed in that he did not attend sufficient classes to have completed the course. Exhibit V hereto. Brown was given notice of the EN 402 aspect of the Academic Board hearing. Exhibit W hereto. Exhibit P hereto was submitted by Brown on that point. Exhibit T sets forth the Academy's response to Brown's argument.

DHM:nc
72-2577

WHEREFORE, a careful review of the administrative file on Brown clearly illumines the procedures followed,

demonstrates that those procedures were in accord with substantial justice and with due process as that term is applied in Military Academy disciplinary proceedings and establishes that plaintiff is unable on the facts in this case to show probability of success on the trial on the merits.


DANIEL W. SHIMEK

Sworn to before me this
31st day of July, 1972.

Notary Public

DANIEL H. MURPHY, II
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2821565
Qualified in New York County
Commission Expires March 30, 1973

DEFENDANTS' NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

NOTICE IS HEREBY GIVEN that the defendants
above named hereby appeal to the United States Court of
Appeals for the Second Circuit from the order granting
plaintiff's motion for a preliminary injunction entered
in this action on August 9, 1972.

Dated: New York, New York

September 15, 1972.

WHITNEY NORTH SEYMOUR, Jr.
United States Attorney for the
Southern District of New York
Attorney for Defendants.

By: DANIEL H. MURPHY, II
Assistant United States Attorney
Office & P.O. Address:
United States Court House
Foley Square
New York, New York 10007
Tel: (212) 264-6322

TO: JOAN GOLDBERG, ESQ.
Messrs. Rabinowitz, Boudin & Standard
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10014

Defendants' Notice of Appeal

A-54

Clerk,
U.S. Court of Appeals
Second Circuit
U.S. Crt Hse-Foley Sq.
New York, NY 10007

ANSWERUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

The defendants, by their attorney, Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, and for their answer to the complaint:

1. Admit each allegation contained in paragraph "1".
2. Deny each allegation contained in paragraphs "2" and "3".
3. Upon correction of paragraph "4" to read that plaintiff resides in Maryland, defendants admit each allegation contained in paragraph "4".
4. Upon correction of paragraph "5" to describe defendant Knowlton as Lieutenant General William Knowlton and defendant Walker as Brigadier General Sam Walker, defendants admit each allegation contained in paragraph "5".
5. Admit each allegation contained in paragraph "6".
6. Deny each allegation contained in paragraph "7".
7. Deny each allegation contained in paragraph "8" but admit that on June 3, 1972, the plaintiff herein was

Answer

determined by the Academic Board convened at the Academy to be deficient in conduct for receiving a total number of demerits in excess of the amount allowed for the period December 21, 1971, through June 7, 1972, and that on June 3, 1972 the Academic Board recommended that plaintiff be separated from the United States Military Academy.

8. Admit each allegation contained in paragraph "9".

9. Deny each allegation contained in paragraphs "10", "11", "12" and "13" and the subparts thereto.

10. Deny each allegation contained in paragraph "14" but admit that upon the occurrence of the acts admitted in paragraphs "7" and "8" of this answer plaintiff was separated from the United States Military Academy and discharged from the United States Army on June 21, 1972.

11. Deny each allegation contained in paragraphs "15", "16", "17" and "18".

FIRST DEFENSE

12. Since service of process was not properly made upon defendants under F.R. Civ. P. 4(d), 28 U.S.C., there is no in personam jurisdiction over defendants.

SECOND DEFENSE

13. Plaintiff's complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

14. This Court lacks jurisdiction over the subject matter of plaintiff's complaint.

WHEREFORE, defendants demand judgment dismissing the complaint and granting such other and further relief, including but not limited to the costs and disbursements of this proceeding, as may be just.

Dated: New York, New York
September 25, 1972

WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendants.

By: 

DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6322

TO:

JOAN GOLDBERG, ESQ.,
Messrs. Rabinowitz, Boudin & Standard
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

NOTICE OF DEFENDANTS' MOTION
TO DISMISS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Daniel W. Shimok, Major, United States Army, sworn to June 7, 1973, and all the pleadings, papers and other proceedings had and filed herein, the undersigned will move this Court on June 20, 1973, at 2:15 P.M., at the United States Court House, Room 2804, Foley Square, New York, New York 10007, for an order dissolving the preliminary injunction entered herein August 9, 1972, and dismissing plaintiff's complaint as moot.

Dated: New York, New York

June 7, 1973

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants

By: _____

DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Court House
Foley Square, New York, N.Y. 10007
Telephone: (212) 264-6322

Notice of Defendant's Motion
to Dismiss

A-59

TO: RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

DEFENDANTS' AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS

A-60

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

DANIEL W. SHIMEK, being duly sworn, deposes and
says:

1. I am a Major in the United States Army assigned as an Assistant Staff Judge Advocate and Associate Professor of Law at the United States Military Academy, West Point, New York. In the course of my duties, I have reviewed the conduct deficiency case of Cadet Steven F. Brown, the plaintiff in this action. I am familiar with the decision of the United States Court of Appeals for the Second Circuit in the case of Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972) and with the decision of the Honorable Marvin E. Frankel of this Court entered August 3, 1972, herein.

2. I make this affidavit to supplement my affidavit of July 31, 1972, filed herein, which affidavit without the accompanying exhibits is attached hereto as Exhibit A.

3. Shortly after the decision by the Court of Appeals in Hagopian, the United States Military Academy

Defendants' Affidavit in Support
of Motion to Dismiss

requested authorization from the Department of the Army to conduct a hearing of the conduct cases of Cadets Hagopian, Jarengo and Brown. Authorization was granted on November 24, 1972 (Tr. 306).^{*} I notified Cadet Brown orally on that day; written notice of the rehearing was given November 27, 1972 (Tr. 82, 81). Rehearing was originally set for December 13, 1972 (Tr. 82). Also on November 24, 1972, Captain William F. Belcher, whose affidavit of July 31, 1972 is a part of this record, an Assistant Staff Judge Advocate and Assistant Professor of Law at the United States Military Academy, was authorized to assist Cadet Brown in the preparation of his case.

4. On December 4, 1972, Cadet Brown specified the demerits he challenged and the witnesses he proposed calling. (Tr. 84-86). The rehearing was adjourned from December 13 to December 21, 1972, on the agreement of all parties. The rehearing was held on December 21, 22, 1972, and January 9,

^{*} The summarized record of the proceedings before the Academic Board is submitted under separate cover. Parenthetical references are to numbered pages of that record.

Defendants' Affidavit in Support
of Motion to Dismiss

1973 (Tr. 15). The decision of the Academic Board was entered January 9, 1973 (Tr. 81). The summary of the record concludes (Tr. 67):

"The Dean [Brigadier General John R. Jannarone] stated that the Academic Board finds that Cadet Brown was Deficient in Conduct for the period 21 December 1971 to 7 June 1972 and that he does not have the potential to warrant retention. Accordingly the Board recommends that appropriate action be taken to separate Cadet Brown from the United States Corps of Cadets."

The summarized record of the proceedings before the Academic Board was authenticated on February 23, 1973 (Tr. 13).

5. On March 16, 1973, Captain Belcher submitted an appeal on behalf of Cadet Brown (Tr. 228-305). The appeal and the record were transmitted to the Department of the Army on March 21, 1973 (Tr. 7). The procedures followed by the United States Military Academy were ordered reviewed for legal sufficiency in the light of the Second Circuit decision in Hagopian. Exhibit "B" hereto. The April 12, 1973 opinion of the Administrative Law Division of the Office of the Judge Advocate General on such review and the reasoning on which such opinion was based is attached hereto as

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Defendants' Affidavit in Support
of Motion to Dismiss

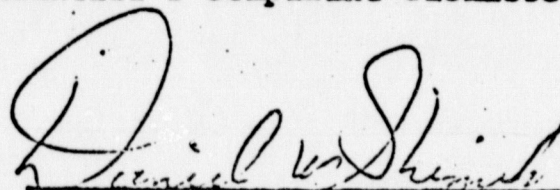
Exhibit "C". Due to a typing error, in numbering the pages, there is no page 2 of such opinion.

6. The Secretary of the Army approved the reconsideration findings of the Academic Board in the case of Cadet Brown, plaintiff herein, on April 17, 1973 (Tr. 2).

7. Further action was delayed pending attempts to resolve this matter short of further resort to this Court.

8. Cadet Brown was separated from the Academy and then discharged from the United States Army effective June 21, 1972 (Tr. 310). He received an honorable discharge. Ibid. He was returned to the Academy pursuant to the order entered herein on August 9, 1972. Now his rehearing has been granted; the Academic Board has determined that he be severed; the Secretary of the Army has approved; due process has been granted.

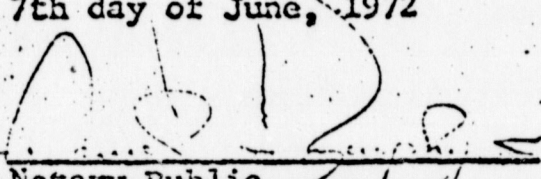
WHEREFORE, plaintiff having been severed and discharged after a rehearing in compliance with Hagopian, the preliminary injunction of this Court entered August 9, 1972, should be dissolved, and plaintiff's complaint dismissed.


DANIEL W. SHINER

Defendants' Affidavit in Support
of Motion to Dismiss

Sworn to before me this

7th day of June, 1972


Notary Public

DANIEL H. MURPHY, II
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2821565
Qualified in New York County
Commission Expires March 30, 1975

NOTICE OF PLAINTIFF'S CROSS-MOTIONUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Steven F. Brown, plaintiff in the within action, sworn to the 28th day of June, 1973, and all the pleadings, papers and other proceedings had and filed herein, the undersigned will move this court on July 3, 1973, at 2:15 P.M. in the afternoon, at the United States Courthouse, Room 2804, Foley Square, New York, New York, for a declaratory judgment and an order requiring defendants to issue to the plaintiff his degree and a commission in the United States Army as a second lieutenant, or for leave to amend the complaint herein.

Dated: New York, N.Y.
July 2, 1973.

Yours, etc.,

RABINOWITZ, BOUDIN & STANDARD

By: _____

A Member of the Firm
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

Notice of Plaintiff's Cross-Motion

TO: PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants
United States Courthouse
Foley Square
New York, New York 10007
Att.: Daniel H. Murphy, II
Assistant United States Attorney

SUPPLEMENTARY COMPLAINTUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

Plaintiff, through his attorneys, Rabinowitz, Boudin & Standard, alleges:

1. This is a civil action brought by the plaintiff to obtain declaratory and injunctive relief determining that plaintiff's separation from the United States Military Academy and his discharge from the United States Army are illegal and ordering defendants to confer upon plaintiff his degree certifying that he has graduated from the United States Military Academy and commission him a second lieutenant in the United States Army.

2. Jurisdiction is conferred upon this court pursuant to Title 28 U.S.C. §§ 1331, 1361, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand (\$10,000.00) Dollars.

PARTIES

4. The plaintiff is a citizen of the United States and is currently residing in the State of Maryland.

Supplementary Complaint

5. Defendants Major General William Knowlton and Brigadier General Samuel Walker are respectively Superintendent and Commandant of the United States Military Academy, West Point, New York. They are the senior officers in charge of the operations of the Military Academy at West Point and, as such, are the officers with ultimate supervision and direction of the plaintiff herein. They are sued herein both personally and in their official capacities.

6. The defendant Robert F. Froehlke is the Secretary of the Army of the United States. He is sued herein both personally and in his official capacity.

CAUSE OF ACTION

7. Plaintiff herein has completed five years as a cadet at the United States Military Academy.

8. On or about June 2, 1972, the plaintiff herein was determined by an Academic Board convened at the Academy to be deficient in conduct for receiving a total number of demerits in excess of the amount allowed for the period January through June, 1972. On said date the Academic Board recommended that he be separated from the United States Mili-

Supplementary Complaint

tary Academy. On or about June 3, 1972, plaintiff was processed out of the United States Military Academy. [Prior to this determination a Commandant's Board had recommended that plaintiff be turned back one year and repeat his senior year.]

9. The recommendation of the Academic Board was referred to the Secretary of the Army, Froehlke, one of the defendants hereir, for approval. On June 21, 1972, the Secretary of the Army acted on the referral and discharged plaintiff.

10. The action of the Academic Board was based upon written reports alleging that the plaintiff herein was deficient in conduct on numerous occasions in that he had violated various regulations and orders.

11. Plaintiff herein submitted to the Academic Board written statements contesting the factual accuracy of at least two of these reports. With regard to a third report, plaintiff was not given notice sufficient to advise him of the charges against him. A determination in favor of the plaintiff on these reports would have resulted in

Supplementary Complaint

plaintiff's total number of demerits being less than the maximum allowed for the relevant period. Had plaintiff had the opportunity to properly defend against the charges he would not have been recommended for separation from the Military Academy and would not have been discharged from the Army.

12. Prior to this date another Academic Board was convened to separate him from the United States Military Academy for academic failure. This Board was illegal and a denial of due process in that the Regulations for United States Military Academy § 5.18 gives a cadet the right to re-examination where he fails one subject.

13. The procedures followed by the United States Military Academy in separating plaintiff from the United States Military Academy and discharging him from the Army denied plaintiff due process of law, in that:

(a) Plaintiff was not provided an opportunity to be present at the meeting of the Academic Boards at which his delinquency record was considered and the charges against him determined.

(b) Plaintiff was not provided an opportunity

Supplementary Complaint

to present his own personal testimony before the Boards nor the testimony of any witnesses on his behalf.

(c) Plaintiff was not permitted to cross-examine nor in any way question the persons whose reports had constituted the allegations and evidence against plaintiff before the Academic Board.

(d) Plaintiff was not provided with the opportunity of having counsel, or a legally trained person, appear before the Academic Board on his behalf, nor submit arguments to the Academic Board in writing, or otherwise.

(e) The plaintiff was not provided the opportunity of consulting with counsel or other legally trained persons in any manner regarding the charges and possible actions pending against him although counsel and/or other legally trained personnel were available at the Military Academy.

(f) The Academic Board had before it for consideration the reports and recommendations of plaintiff's Company Tactical Officer and Regimental Commander. Plaintiff was not provided with the opportunity of inspecting said reports and recommendations. Nor was plaintiff informed in

Supplementary Complaint

any manner or to any degree of the contents of said reports and recommendations. Plaintiff was thereby deprived of the opportunity to respond in any manner to said reports and recommendations.

(g) Plaintiff was not informed in any manner whether or not the Academic Board had before it any information or evidence against plaintiff other than the aforesaid reports for delinquency in conduct and the aforesaid reports and recommendations by said Company Tactical Officer and Regimental Commander. Plaintiff therefore did not have the opportunity to respond to such additional information and evidence against him which may have been before the Board.

(h) The plaintiff was not informed in any manner of the basis upon which the Academic Board reached its determination. The plaintiff was thereby deprived of the opportunity of protesting to the Board or to any other authority in any manner the Academic Board's determination, and was thereby deprived of the opportunity to submit to said Board or to any other authority any additional statement, argument or additional evidence relevant to the Board's determination.

Supplementary Complaint

..... (i) The Army did not follow its own regulations in recommending separation from the service on the basis of academic delinquency.

14. As a direct and immediate consequence of the Board's determination, the plaintiff was processed out of the Military Academy on June 21, 1972.

15. Plaintiff brought an action for injunctive and declaratory relief requesting his reinstatement at the Academy.

16. This court, Frankel, D.J., granted preliminary relief and ordered plaintiff returned to the Academy without limitations on such reinstatement pending trial and decision or after application to the court.

17. Plaintiff was reinstated at the Academy and he repeated his senior year and thus should have been graduated in June of 1973.

18. Notwithstanding the order of the court, the defendants reconvened the Academic Board and at a hearing that purported to comply with due process requirements again recommended that plaintiff be dismissed from the Academy.

19. This second hearing denied plaintiff due process of law in that it did not comply with due process proceedings required by the Constitution and did not comply with the guidelines set forth by the Court of Appeals in a companion case (Hagopian v. Knowlton, 470 F.2d 201 (2nd Cir. 1972), in that:

(a) The Board proceedings were based on delinquency reports that were received more than six months before the hearing. Neither the Academy nor plaintiff had any evidence regarding some of the delinquencies because it was never anticipated that a hearing would be held with respect to these charges.

(b) Plaintiff was denied the opportunity to examine his entire military file, although such file was admitted at the hearing on the question of retention.

(c) The military records of each delinquency report were considered correct in the absence of evidence to the contrary. Thus, plaintiff was denied the opportunity to confront and cross-examine the charging officers. He did not receive a fair hearing within the meaning of the due process clause because he was not apprised of the evidence

Supplementary Complaint

against him and had no opportunity to respond thereto.

(d) The Academic Board was not an impartial fact finder since it had already determined after the initial hearing that was held to be invalid by this court that he should not be retained at the Academy.

20. Nevertheless, defendant Secretary of the Army approved this recommendation.

21. As a direct and immediate consequence of the action by the Secretary of the Army, approving the determination of the Academic Board, the plaintiff was not graduated from West Point and did not receive a college degree.

WHEREFORE, plaintiff prays that the following relief be granted:

1. That this court issue a declaratory judgment declaring that the procedures by which it was determined that plaintiff should be separated from the Military Academy violated due process of law, as provided by the Fifth Amendment to the United States Constitution;

2. that this court set aside the discharge approved by the Secretary of the Army;

Supplementary Complaint

3. that this court issue an injunction ordering the defendants to grant plaintiff a Bachelor of Science degree and a commission in the United States Army;

4. For such other and further relief as to this court seems just and proper.

Dated: September 11, 1973.

RABINOWITZ, BOUDIN & STANDARD

By: _____
A Member of the Firm
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

ANSWER TO AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

The defendants, by their attorney, Paul J. Curran,
United States Attorney for the Southern District of New
York, and for their answer to the amended complaint:

1. Admit each allegation contained in paragraph "1".
2. Deny each allegation contained in paragraphs "2" and "3".
3. Admit each allegation contained in paragraph "4".
4. Upon correction of paragraph "5" to describe defendant Knowlton as Lieutenant General William Knowlton and defendant Walker as Brigadier General Sam Walker, defendants admit each allegation contained in paragraph "5".
5. Admit each allegation contained in paragraph "6".
6. Deny each allegation contained in paragraph "7".
7. Deny each allegation contained in paragraph "8" but admit that on June 3, 1972, the plaintiff herein

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Answer to Amended Complaint

was determined by the Academic Board convened at the Academy to be deficient in conduct for receiving a total number of demerits in excess of the amount allowed for the period December 21, 1971, through June 7, 1972, and that on June 3, 1972 the Academic Board recommended that plaintiff be separated from the United States Military Academy.

8. Admit each allegation contained in paragraph "9".

9. Deny each allegation contained in paragraphs "10", "11", "12" and "13" and the subparts thereto.

10. Deny each allegation contained in paragraph "14" but admit that upon the occurrence of the acts admitted in paragraphs "7" and "8" of this answer plaintiff was separated from the United States Military Academy and discharged from the United States Army on June 21, 1972.

11. Admit each allegation contained in paragraph "15".

12. Deny each allegation contained in paragraph "16" but admit that an order was entered herein on August 9, 1972, and refer to such order for the terms thereof.

13. Deny each allegation contained in paragraph "17".

14. Admit each allegation contained in paragraph "18".

15. Deny each allegation contained in paragraph "19" and the subparts thereof.

16. Deny each allegation contained in paragraph "20" but admit that on April 17, 1973 the Secretary of the Army approved the reconsidered findings of the Academic Board with respect to plaintiff.

17. Deny each allegation contained in paragraph "21" but admit that plaintiff has not graduated from the United States Military Academy at West Point, New York.

FIRST DEFENSE

18. The cause of action, if any, stated in the first fourteen paragraphs of plaintiff's amended complaint was dismissed by this Court as moot by order entered herein on September 6, 1973.

SECOND DEFENSE

19. This Court lacks jurisdiction to order defendants to grant plaintiff a commission in the United States Army.

Answer to Amended Complaint

THIRD DEFENSE

20. Plaintiff's amended complaint fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

21. This Court lacks jurisdiction over the subject matter of plaintiff's amended complaint.

WHEREFORE, defendants demand judgment dismissing the amended complaint and granting such other and further relief, including but not limited to the costs and disbursements of this proceeding, as may be just.

Dated: New York, New York

September 13, 1973.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Defendants.

By: 

DANIEL H. MURPHY, II
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Tel.: (212) 264-6322

Answer to Amended Complaint

A-81

TO:

JOAN GOLDBERG, ESQ.
Messrs. Rabinowitz, Eoudin & Standard
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

NOTICE OF MOTION FOR SUMMARY JUDGMENT

A-82

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavit of Steven F. Brown, plaintiff in the within action, sworn to the 28th day of June, 1973, and submitted in opposition to the government's motion to dismiss the original complaint, and upon the supplementary complaint, dated September 11, 1973, and upon all the pleadings, papers and other proceedings had and filed herein, the undersigned will move this Court on the 9th day of October, 1973 at 11 A.M. in the forenoon, or as soon thereafter as counsel may be heard, at the United States Courthouse, Foley Square, New York, N.Y., for summary judgment, pursuant to Rule 56 of the Rules of Civil Procedure, on the grounds that there are no defenses to the action and there are only issues of law involved.

Dated: New York, N. Y.
September 13, 1973.

Yours, etc.,

RABINOWITZ, BOUDIN & STANDARD

By: 

A Member of the Firm
Attorneys for Plaintiff
30 East 42nd Street
New York, New York 10017

PLAINTIFF'S AFFIDAVIT IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT

A-83

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

STEVEN F. BROWN, being duly sworn, deposes and says:

1. This affidavit is submitted in opposition to the government's motion to dissolve a stay entered by Judge Frankel on August 3, 1972 ordering my reinstatement at the United States Military Academy, and in support of my request to this court that defendants be ordered to grant me my degree and a commission in the United States Army.

2. I was scheduled to graduate from West Point in June, 1972. However, charges brought against me resulted in a decision that I repeat my senior year at the Academy. Subsequent to this decision, the Academy sought to discharge me from the Academy using the same charges, as well as minor conduct infractions, as the basis for my separation.

3. I was ordered discharged in June, 1972 and brought an action to compel my reinstatement at the Academy. A preliminary

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

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injunction was granted on the grounds that the Academic Board proceeding that recommended my discharge denied me due process of law.

4. Notwithstanding the order of the court, the defendants again sought to dismiss me from the Academy and I did not receive my degree and commission on June 6, 1973 with the rest of my class, although I have completed my fifth year at West Point and received passing grades in all subjects.

5. The charges brought against me were based on the same delinquency reports that were the basis of the action that resulted in my discharge in June, 1972.

6. At that time, I brought an action against the United States Military Academy for a preliminary injunction to set aside the order of the Secretary of the Army separating me from the United States Military Academy on the grounds that the hearing to determine whether I should be dismissed from the Academy denied me due process of law, in that:

(a) I did not have the opportunity to consult with counsel;

(b) I was not given adequate notice of the charges against me;

(c) I was not present at the Board hearing and I

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

A-85

was not permitted to present witnesses to the Board;

(d) I had no opportunity to cross-examine the complaining officers with respect to the charges;

(e) I was not given the opportunity to inspect and respond to the reports and recommendations considered by the Board;

(f) I was not advised of the basis of the decision;
and

(g) I had no opportunity for a meaningful appeal.

7. On August 3, 1973, Judge Frankel granted the preliminary injunction in all respects and ordered me readmitted to the program of instruction and training at the United States Military Academy and he further ordered that no limitations be imposed upon my reinstatement without specific application to the court upon reasonable notice (Exhibit "1").

8. On or about August 10, 1972, I returned to the United States Military Academy.

9. The government appealed from the order granting the preliminary injunction, but such appeal was withdrawn by stipulation after the decision in Hagopian v. Knowlton, 470 F. 2d 201 (2nd Cir. 1972), a decision in a very similar case which held that the procedure followed for the dismissal of Hagopian

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

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(and also myself) constituted a denial of due process of law and set forth minimum due process standards.,

10. Subsequent to the decision in Hagopian, supra, the authorities at the Military Academy initiated proceedings to separate Hagopian, another cadet and myself from the Academy on the grounds that we had accumulated excessive demerits during the prior year.

11. The first case scheduled to be heard at the Academy involved the third cadet and an action to enjoin such procedure was brought before the court, where it was dismissed as premature. The hearing was subsequently held at West Point and the cadet was retained at the Academy.

12. A motion was brought to enjoin the hearing to separate Hagopian from the Academy and the judge in that case also refused to enjoin on the grounds that it was premature. This motion was withdrawn. The hearing was held and Hagopian was retained at the Academy.

13. No motion was brought in the instant case and an Academic Board hearing was held December 21, 22, 1972 and January 9, 1973.

14. Objections were made to the conduct of this hearing on the grounds that:

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

(a) The Board proceedings were based on delinquency reports that were received more than six months before the hearing. Neither the Academy nor I had any evidence regarding some of the delinquencies because it was never anticipated that a hearing would be held with respect to these charges.

(b) I was denied the opportunity to examine my entire military file, although such file was admitted at the hearing on the question of retention.

(c) The military records of each delinquency report were considered correct in the absence of evidence to the contrary. Thus, I had no opportunity to confront and cross-examine the charging officers. I did not receive a fair hearing within the meaning of the due process clause because I was not apprised of the evidence against me and I had no opportunity to respond thereto.

(d) The Academic Board was not an impartial fact finder since it had already determined after the hearing held to be invalid by this court that I should not be retained at the Military Academy; thus, I do not believe that this is an impartial board as required by the due process clause.

15. My motions to the Board were denied and I requested

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

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that certain named witnesses be present. I further requested a bill of particulars with respect to those offenses which I could not recall. I did not receive the "bill of particulars" nor were all the witnesses I requested called.

16. I objected to some of the charges and was able to reduce or remove some demerits. I also objected to the punishment imposed for some of the offenses as being not in accordance with the regulations, and that resulted in further reduction of demerits. The number of demerits was thereby reduced from 158 to 118, leaving me with 16 more demerits than the maximum permitted.

17. At the Board hearing no evidence at all was introduced to prove that I had committed any of the offenses with which I was charged. I had no opportunity to refresh my recollection with regard to 11 of those charges which I could not recall (see Government Appendix, Ex. "G", Para. 1). I was denied the right to cross-examine all those officers who filed charges against me.

18. I had no right to appear with counsel because of the alleged informality of the proceedings. Yet, I believe that the record of the proceedings before the Academic Board reflects the adversary nature of the proceedings and how the failure to have a lawyer present was so prejudicial as to amount to a denial of due process.

19. I was not permitted to examine relevant documents in my file. I am advised that all adverse statements used against me

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

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must be made available to me according to regulation and as a matter of due process.

20. The proceedings which resulted in a recommendation that I be separated from the United States Military Academy were improper in that it did not comply with the rudiments of due process as set forth in the Hagopian decision in that the hearing did not take place within "the relatively short duration of a college semester....," which would give the cadet "the opportunity to appear and contest the factual basis of demerits previously awarded without a hearing would not be lost to the memory of either the cadet or available witnesses."

21. I was not graduated with my class and I was not told of this decision until shortly before graduation. This was done without notice to this court and in violation of the order of Judge Frankel.

WHEREFORE, I respectfully request that this court order the Academy to grant me my degree or set this matter down for a hearing or trial at which it can be determined whether the proce-

Plaintiff's Affidavit in Opposition
to Motion for Summary Judgment

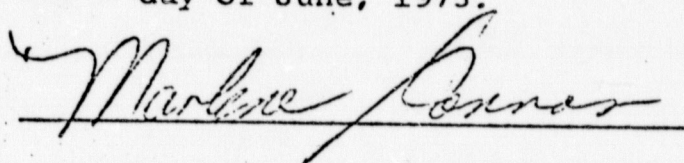
dures used to dismiss me from the Academy again denied me due
process of law.



Steven F. Brown

Sworn to before me this

28th day of June, 1973.



MARLENE CONNOR, Notary Public
State of New York, No. 03-5739465
Qualified in Bronx County
Commission Expires March 30, 1974

DEFENDANTS' NOTICE OF MOTION
TO DISMISS AND FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

S I R :

PLEASE TAKE NOTICE that upon the annexed memorandum of law and the annexed affidavit of Assistant United States Attorney Christopher Roosevelt, and all the pleadings, papers and other proceedings had and filed herein, the undersigned will move this Court, before the Honorable Robert J. Ward, United States District Judge for the Southern District of New York, in the United States Courthouse, Foley Square, New York, New York, on the 20th day of November 1973, at 11:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an order pursuant to Rule 12(b)(6) and 56 of the Federal Rules of Civil Procedure dismissing the complaint ("Supplementary Complaint") and granting summary judgment in favor of all the defendants herein and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York

November 9, 1973.

Defendants' Notice of Motion to
Dismiss and For Summary Judgment

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Federal Defendants

By: *61*

CHRISTOPHER ROOSEVELT
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6326

TO: RABINOWITZ, BOUDIN & STANDARD
30 East 42nd Street
New York, New York 10017

ONLY COPY AVAILABLE

(Same Title)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am in charge of and familiar with the above-captioned matter.

2. This affidavit is submitted in lieu of a statement pursuant to Rule 9(g) and in support of the Federal defendants' motion for dismissal of the complaint and for summary judgment pursuant to Rule 12(b)(6) and 56 of the Federal Rules of Civil Procedure; it is also submitted in opposition to the motion for summary judgment by plaintiff dated September 13, 1973.

3. The reason the defendants submit Rule 9(g) statement is that for the purposes of the motion they rely on the facts (rather than legal conclusions) alleged in a conclusory fashion in plaintiff's

Complaint, and the facts contained in the affidavit of Daniel W. Shimak dated June 7, 1972, previously served and filed with this Court.

4. Defendants furthermore join in the statement by plaintiff's counsel in the notice of motion dated September 13, 1973, that "there are only issues of law involved.

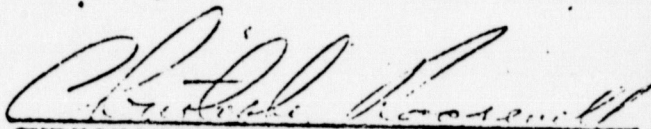
5. On information and belief, based on conversations with Assistant United States Attorney Daniel H. Murphy, II, during previous proceedings in this action the plaintiff was offered a certificate of completion of the academic courses of the United States Military Academy and an honorable discharge with assurances he would not be called to active duty. That offer was totally rejected by plaintiff's counsel.

6. On information and belief, based on conversations with personnel at the United States Military Academy, plaintiff has not satisfactorily completed the requirements prerequisite to receiving an Academy diploma.

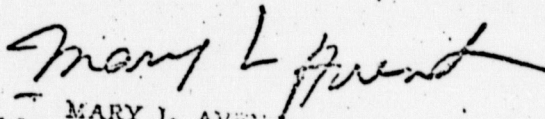
WHEREFORE, plaintiff's complaint should be dismissed and summary judgment entered for the Federal defendants.

Defendants' Affidavit in Support of Motion

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CHRISTOPHER ROOSEVELT
Assistant United States Attorney

Sworn to before me this
9th day of November, 1973.


MARY L. AVENA
Notary Public, State of New York
No. 03-4500237
Qualified in Bronx County
Cert. Filed in Bronx County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

STEVEN F. BROWN, being first duly sworn, deposes and says:

1. The awards imposed for the offenses of: 8 January 1972, "Articles improperly displayed" (Offense Code 863); 15 February 1972, "In need of a haircut at W.P." (Offense Code 805); 26 February 1972, "In need of a haircut at W.P." (Offense Code 805); 26 February 1972, "Articles improperly displayed" (Offense Code 863); 3 March 1972, "Articles improperly displayed" (Offense Code 863); 18 March 1972, "Articles improperly displayed" (Offense Code 863); 25 March 1972, "Dirt/grease/excess oil/spot on art" (Offense Code 847); 5 April 1972, "Failing to sign in or out" (Offense Code 431); 27 April 1972, "Signing in or out improperly" (Offense Code 430); 12 May 1972, "In need of haircut at W.P., i.e., Tactical Officer interview" (Offense Code 805); 17 May 1972, "Not in public frayed/excess worn item clothing" (Offense Code 825) are contested insofar as I do not have any recollection, evidence or other information concerning these reported offenses. My present inability to assert any available defenses against these allegations is directly attributable to the following:

a. At the time these offenses were reported and processed, the Academy did not recognize a cadet's right to a hearing on such minor

offenses (e.g. Class III delinquencies) even in cases where the awards for these offenses were used as a basis for separation. Having no reason to believe that these minor offenses would be the subject of a subsequent evidentiary hearing, I made no effort to gather or preserve evidence concerning such offenses.

b. I was not notified of the Academy's change of position and decision to hold a hearing on these offenses until from 8 to 11 months after their alleged commission.

c. The Academy has not provided me with specifically requested particulars of information as would permit me to concede the validity of the allegation or to successfully defend against it. This failure to provide critically important details of the allegation is apparently also attributable to the loss of records, unavailability of witnesses and loss of memory caused by the passage of time.

2. The award imposed for the offense of 16 February 1972, "Taking advantage of priv when unauth, unintentional" (Offense Code 410) is incorrect. I did not have First Class Privileges on 16 February 1972. The essence of the reported offense was that I exercised the First Class Privilege of consuming alcoholic beverages in violation of paragraph 13, USCC Daily Bulletin No. 31, 16 February 1972, while attending the Armor - Branch Reception at the West Point Army Mess on 16 February 1972. Paragraph 13 of the Bulletin provided as follows:

"BRANCH RECEPTIONS: First classmen serving special confinement

or those without their class privileges may attend their respective branch receptions but must return to their rooms NLT 2100 hr. These cadets may not drink alcoholic beverages during their branch receptions."

I was completely unaware of this restriction at the time I attended the reception and consumed alcoholic beverages. This was pointed out in my Explanation of Report of 18 February 1972. The initial announcement of this restriction was made in the USCC Daily Bulletin on the same day as the reception, 16 February 1972. I checked the company bulletin board on the afternoon of 16 February. At that time, the Daily Bulletin for 15 February was the only Bulletin displayed. It is frequent for the Daily Bulletin not to be posted until late in the afternoon. Moreover, under Regulations, USCC, I had no duty to be familiar with the Daily Bulletin at that time. Paragraph 323b merely requires that cadets read the Daily Bulletin each day. I had previously been told by my Company Commander that I was authorized to attend the reception notwithstanding the suspension of my First Class privileges.

I believe that at the time of the reception my Company Tactical Officer, who was the reporting officer for this offense, was also unaware of the restriction on the consumption of alcoholic beverages. He attended the reception and observed me as I drank. He made no correction or otherwise suggested that I was doing anything wrong. It was not until the following day that I received a Delinquency Report (USMA Form 2-1) signed by him.

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3. The award imposed for the offense of 23 February 1972, "Signing in or out improperly" (Offense Code 430), is incorrect. Offense No. 430 pertains to signing in or out improperly in the company departure book. The company departure book is an official record in which correct entries are required to be made by Regulations, USCC (Ref. paragraph 807). This report was based upon my incorrectly writing "EN 401" rather than "EN 402" in an informal unofficial spiral notebook used to record specific duties from which a cadet has been excused. There is no regulation or directive authorizing the use of such a book or establishing a requirement that a cadet make entries, perfectly correct or otherwise, in it. It is merely used as a tool to assist the Company Administrative Officer in preparing the List of Authorized Absences (USMA Form 2-191).

4. The award imposed for the offense of 3 March 1972, "Dust or lint on articles" (Offense Code 846), is incorrect. Dusting the room is the responsibility of the room orderly (Ref. paragraph 602a, Regulations, USCC). On this date my roommate, Robert H. Dull, was the room orderly.

5. The award imposed for the offense of 3 March 1972, "Articles improperly displayed" (Offense Code 863), is incorrect. The overcoat alleged to have been improperly displayed was owned by my roommate, Robert H. Dull.

6. The award imposed for the offense of 3 March 1972, "Trash in wastebasket at insp" (Offense Code 862), is incorrect. Emptying wastebasket is the responsibility of the room orderly (Ref. paragraph 602a, Regulations, USCC).

7. The award imposed for the offense of 10 March 1972, "Wearing improperly adjusted belts" (Offense Code 816), is incorrect. The belt was worn in the same fashion as ordinarily worn by cadets and not in violation of any established uniform regulation.

8. The award imposed for the offense of 10 March 1972, "Sleeping on top of bed without making bed" (Offense Code 287), is incorrect for the following reasons:

- a. I was not sleeping;
- b. My bed was fully made;
- c. I slept between the sheets that evening.

9. The award imposed for the offense of 18 April 1972, "Not in prescribed uniform on public area at W.P." (Offense Code 837), is incorrect. The reported offense occurred when I was escorted by a cadet guard from the Boarders' Ward to the staff dining room of the cadet mess hall for breakfast without a tie. I wore a gray jacket over my shirt. The staff dining room is where the cadet mess employees eat their meals. This cannot be considered a "public area".

10. The award imposed for the offense of 25 April 1972, "Room not in prescribed condition" (Offense Code 877), is incorrect. An examination of the Delinquency Report upon which this award was based contains 3 specific allegations concerning the condition of my room in the Boarders' Ward upon which his conclusion of "Room not in PMI order was based: (a)

Affidavit of Steven F. Brown

I was sleeping in bed at 0837 hours; (b) my comforter was not folded at the foot of the bed; and (c) clothes were draped over the bed. These specific conditions, upon which the general allegation is based, are separately discussed as follows:

(a) I was sleeping in bed at 0837 hours. Cadets are authorized to sleep in their rooms during periods when their rooms are required only to be in PMI order. In places other than the Boarders' Ward, rooms must be in AMI order and sleeping is prohibited from Assembly for the first hour class until 1030 hours. Rooms in the Boarders' Ward are always required to be in PMI order. Therefore, there is no prohibition against sleeping in the Boarders' Ward prior to 1030 hours.

(b) My comforter was not folded at the foot of my bed. It was covering my body.

(c) Clothes were draped over the bed. This is the only thing that was wrong with the condition of my room. This condition should have been reported under Offense Code 866, "Leaving articles outside room or locker", for which an award of 2 demerits could have been given.

11. The award imposed for the offense of 25 April 1972, "Failure to comply with general orders and instr/intentional" is incorrect. When the Officer in Charge entered my room in the Boarders' Ward at 0837 hours on 25 April 1972 and reported me for "Room not in prescribed condition" due to (a) my sleeping; (b) comforter not folded; and (c) clothes draped over bed, he also apparently ordered me to get out of bed and get dressed. I was asleep

and did not hear him. He returned 23 minutes later, at 0900 hours, to find me still sleeping. He then reported me for "Failure to comply with direct order (i.e. to get out of bed and get dressed)." This report was referred to a Commandant's Board who made the following specific findings:

(a) That I had no knowledge of the order and did not intentionally fail to comply with it;

(b) That I failed to comply with general orders and instructions, written, intentional, i. e., not having room in PMI order by the prescribed time and by sleeping in bed prior to 1030 hours in violation of Regulations, USCC.

Thus, I received an award for sleeping and having clothes draped over the bed at 0837 and an award for sleeping and having clothes draped over the bed at 0900 when I slept continuously between these times. There could hardly be a clearer case of double punishment for the same acts.

12. The award imposed for the offense of 26 April 1972, "Making minor error in record or communications" (Offense Code 428), is incorrect. The communication referred to in the offense description is an Explanation of Report dated 26 April 1972. Although not required, I typed the Explanation of Report. It was not perfect typing but was generally neat. There were 3 or 4 strike-over corrections. On the evening of 25 April 1972 I was kept up all night by a separation board convened to investigate whether I should be separated for my involvement in an automobile accident and related disciplinary offenses. The Explanation of Report was required, prepared and submitted the following day. Major Comello, the Assistant S1, USCC, who was fully aware of these circumstances, felt compelled to award me demerits for these typing errors.

13. The award imposed for the offense of 5 May 1972, "Abs from form & miss all inst/dy unintentional" (Offense Code 223), is incorrect. This offense was considered and punished by a Commandant's Board which met on 26 May. That Board considered multiple absences from EN 402, including this absence of 5 May 1972. Although the record indicates that Major Comello, the Assistant S1, USCC, made an effort to avoid the appearance of double punishment by crossing out and initialing the alleged absence of 5 May, the record of that Commandant's Board proceedings clearly indicates that he attempted this after the Board had fully considered this absence and made its findings and recommendations. The offense description appearing in Part I of the Recommendation for Punishment Award (USMA Form 2-3) states 10 dates, including 5 May 1972, upon which I was alleged to have been absent from EN 402.

In Part IV of USMA Form 2-3, Board Findings and Recommendations of the Commandant's Board concluded that I was absent from 11 EN 402 classes and recommended a punishment which was approved by the Commandant. Thus, the absence of 5 May 1972 was fully considered and punished by the Commandant's Board convened on 26 May 1972.

In addition, I was excused from all formations, including classes, on 5 May 1972, because of my continued presence in the Boarders' Ward. This is reflected on the attached copy of List of Authorized Absentees, (USMA Form 2-191) 5 May 1971. I was retained in the Boarders' Ward in violation of Regulations after 26 April 1972. I was moved to the Boarders'

Ward on or about 23 March 1972 following my involvement in an automobile accident. Paragraph 318, Regulations, USCC, authorizes the quartering of cadets in the Boarders' Ward if they are resigning or undergoing separation. Although my resignation was solicited at the time of my transfer to the Boarders' Ward it was not obtained. Board proceedings to determine whether I should be separated were terminated in my favor on 26 April 1972. However, no action was taken at that time to return me to my company. Thus, I remained in the Boarders' Ward under the immediate supervision of the S1, USCC, from about 23 March 1972 until early June. When I entered the Boarders' Ward on or about 23 March 1972 approximately 13 weeks had passed in that demerit period. At that time I had only 36 demerits and had never appeared before a Commandant's Board in my 3 1/2 years at the Academy. In the next 8 weeks I received 122 demerits and had 4 Commandant's Boards.

14. The award imposed for the offense of 16 May 1972, "Gross lack of judgement in preparation of First Class Research Paper rewrite requirement, SS 407" (Offense Code 908), is incorrect. This offense was referred to a Commandant's Board and a hearing was conducted on 24 May 1972. The Board found that I was not guilty of "Gross lack of judgement" (Offense Code 908) but guilty of a lesser offense, "Extremely poor judgement" (Offense Code 907) and recommended an award of 15 demerits and 20 punishments. 15 demerits and 20 punishments is the authorized award for "Extremely poor judgement." On 25 April 1972

Affidavit of Steven F. Brown

the Approving Authority disapproved the finding of the Commandant's Board with respect to the lesser of offense of "Extremely poor judgement" and substituted a finding of guilty of "Gross lack of judgement." On the basis of this more adverse substituted finding an award of 15 demerits, 22 punishments and 1 months confinement was imposed. Such action is not authorized by applicable regulations. Paragraph 32h, Disciplinary System S.O.P. (1968), authorizes the approving authority to "approve, disapprove, or modify the recommended award." There is absolutely no authority for the appointing authority to substitute his own findings for that of the Board. The entire reason for the Board's existence is to hear the actual evidence and to make considered findings thereon. The substituted finding and recommended award based thereon are legally insufficient.

The record reflects that this case was processed through a Commandant's Board, reviewed, finally approved and orders were cut and signed for in the short space of 2 days. This rapid processing, together with the approving authority's substituted finding and award, resulted in the award of 15 excess demerits (30 to 45) in the Commandant's Board convened on 26 May 1972. This greater punishment was authorized on 26 May 1972 due to the fact that I had received an award of at least 15 demerits, 22 punishments, and 1 months confinement from a prior Commandant's Board (i.e., 24 May 1972). This is the exact award which the approving authority substituted for the 24 May's Board recommendation which, if approved, would not have permitted the 26 May Board to award 45 demerits.

Affidavit of Steven F. Brown

15. The award imposed for the offense of 23 May 1972, "Gross lack of judgement, i.e., absent from EN 402 on 11 occasions since 13 April, absent from Military Art an unknown number of times, and making no effort to correct the situation or seek help, 23 May 72" (Offense Code 908) is incorrect on the following grounds:

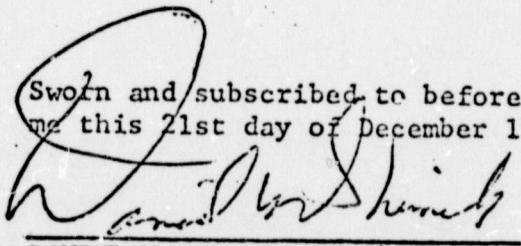
a. The finding of the Commandant's Board which imposed the award that I missed 11 EN 402 classes is not supported by the evidence. There are only 10 dates specified in the allegation and punishment for 1 of the 10 had already been imposed.

b. It is generally understood that cadets assigned to the Boarders' Ward are under no obligation to attend classes and other formations. In this instance I was told by officers in the Tactical Department that the best I could possibly hope for would be a "turn back." The fact that my absences were authorized is further indicated by the attached List of Authorized Absentees (USMA Form 2-191) for the days in question. I do acknowledge that at some point during this period I was admonished to attend class by Major Comello.

c. The award of 45 demerits was improper insofar as it was based upon the legally insufficient award of a prior Commandant's Board (see paragraph 14).

Further deponent sayeth not.


STEVEN F. BROWN


Swoen and subscribed to before
me this 21st day of December 1972

DANIEL W. SHIMEK
MAJ JAGC

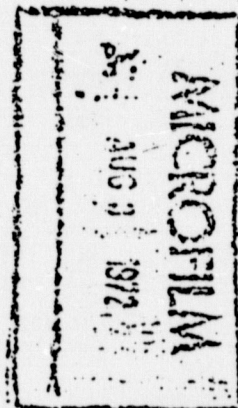
OPINION OF FRANKEL, J.

A-107

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Same Title)

This matter is closely similar in its essential outlines and immediate result to that of Hagopian v. Knowlton, 72 Civ. 2814, as treated in the illuminating opinion of Judge Brieant dated July 21, 1972. Like Hagopian's, this case comes to our emergency part on application for a preliminary injunction. Unlike Hagopian, this case is assigned to a single judge, Hon. Edward C. McLean, who signed the order to show cause making this returnable August 1, 1972. As in Hagopian, the court will now grant temporary injunctive relief



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pending a full airing, including an evidentiary hearing to the extent necessary, of the issues to be resolved before final decision. .

The plaintiff cadet before us would have been graduated from West Point in June. Instead, on June 21, 1972, he was dismissed upon the recommendation of an Academic Board for having conduct demerits in excess of the number allowed for the period which was to be his final six months, January through June, 1972, at the Academy. In this respect, as in some others, Brown's case for a preliminary injunction is stronger than Hagopian's: his investment in a military career was larger and his commissioning closer at the time of his separation.

In most other respects, omitting specific details as to alleged infractions and disputes about them, the instant case closely tracks Hagopian in its material legal aspects. The Government's diagrammatic effort to show otherwise serves only to buttress plaintiff's contention on this score.

Accordingly, since I have concluded that Judge Bricant's reasoning and result should be in substance adopted for present purposes, it is not useful to recount the factual details and legal argumentation at length.

One other feature of the present case should be noted, however, because it indicates an additional element of apparent unfairness beyond what was shown in Hagopian. Among the papers now before the court is an affidavit of William F. Belcher, an attorney admitted in Florida and an Army Captain in the Judge Advocate General's Corps assigned to the staff and faculty at West Point. Captain Belcher, whose sworn assertions are uncontradicted, reports significant facts with apparent candor and courage that should earn him the respect both of his military colleagues and his brethren at the bar. He recounts his efforts to assist plaintiff, with some success, in his

disciplinary difficulties. He then tells how, as the critical time approached leading to plaintiff's separation, he was repeatedly instructed by his superiors to refrain from helping the beleaguered cadet. Thus, on April 27, 1972, the day following a board decision favorable to plaintiff,

Captain Belcher states:

" . . . I was told by Colonel Thomas C. Oldham, the Staff Judge Advocate, that the Academy's policy was that cadets were not entitled to counsel or legal assistance in connection with separations based on deficiency in leadership or aptitude for the service. He then stated that I had been given considerable latitude up until that time because of my representation of Cadet Brown in the "habits and traits" Board proceedings. He then told me that from that date I was to refrain from advising, assisting or counseling Cadet Brown with regard to his possible separation for deficiency in aptitude for the service. He explained that I was not to discuss the merits of the case with him nor was I to advise him as to what action he should take nor was I to assist him in the preparation of any correspondence. He did state, however, that he would permit me to explain procedures to Cadet Brown.

"On the following morning, 23 April 1972, I went back to the Colonel and stated that it was my understanding, based on the previous day's conversation, that I was 'ordered and directed' to refrain from assisting Cadet Brown in the aptitude separation proceedings pending against him. The Colonel confirmed my understanding subject only to the qualification that I could explain procedures. I then told him that in my opinion Cadet Brown was not being dealt with fairly and that he needed the assistance and advice of counsel. I further stated that I had given the matter much consideration and that if I were ordered not to help him then I would have to advise him to seek the services of civilian counsel. The Colonel then directed me not to advise Cadet Brown as to whether or not he needed civilian counsel, stating that Cadet Brown and his parents should make that determination and that he was not going to have me 'embroiling the Academy in litigation.' "

Later, on the day before the Academic Board was to take the action that resulted in plaintiff's dismissal, plaintiff came to the Academy for Captain Belcher's help in drafting a written statement of defense. In another passage of interest, Captain Belcher's affidavit says:

Opinion of Frankel, J.

" . . . I suggested to Cadet Brown that he go to the offices of the Department of Tactics and request copies of all delinquency reports which were to be considered by the Academic Board and upon which any separation for deficiency in conduct would be based. These are the accusatorial reports containing the factual allegation or 'charge' of a particular delinquency or disciplinary offense. Without access to these reports it is impossible to submit matters in defense or rebuttal. This is particularly true in the case of a large number of incidents spanning a period of months. Cadet Brown returned to my office from the Department of Tactics and informed me that the Assistant S-1, Major Jerome J. Comello, had refused to give him copies of the reports on the basis of instructions from his superior in the Department of Tactics, the Deputy Commandant of Cadets. At that point I was particularly concerned over a recent incident involving alleged unauthorized absences from English classes and for which an extremely high number of demerits had been awarded to Cadet Brown. Although Cadet Brown was advised of the specific dates of the absences at some earlier date he did not have a record of them at this time for use in submitting a written statement to the Academic Board. Because the Tactical Department would not give Cadet Brown copies of the reports, I telephoned his English instructor, Lieutenant [sic] Colonel Herman V. Ivey, and asked him for the dates upon which Cadet Brown had missed his class. He said that he would provide me with the dates but that he would have to first refer to his records which were in another office." He said that

he would call me back shortly. Rather than calling me, however, the English Department contacted the Department of Tactics and told them that I was seeking the information. The Department of Tactics then called Colonel Oldham who came to my office and saw that I was with Cadet Brown. He then called me out of my office and asked what Brown was doing there and why I had been asking questions around the English Department. I told him that I was attempting to help Cadet Brown put a statement together for submission to the Academic Board. He told me that cadets were not entitled to the assistance of counsel in such matters and that I was not to further assist Cadet Brown with respect to the separation proceedings based upon deficiencies in conduct (i.e., excess demerits) or aptitude (i.e., leadership). Brown then left my office and no further statement was submitted to the Academic Board. Lieutenant [sic] Colonel Ivey never called me back."

It is unnecessary to decide today whether or to what extent there is an affirmative duty to supply counsel before the Academy ends the career of a cadet whose college life has been closely confined by the physical and spiritual rigors of what the Government characterizes as a "military elite."¹ It seems clear, however, that such fierce obstruction as is

1. Memorandum of Law 9.

now shown to block advice and assistance violates elementary principles of fairness. This factor, added to those marshaled by Judge Brieant and adopted herein, warrants the temporary relief plaintiff seeks.

Beyond the substantial showing of probable success, plaintiff has a heavy preponderance of the equities on his side. Keeping him out of the Academy pendente lite may cost him a precious year of his academic career even if he ultimately wins this lawsuit.²

Allowing his presence in the Corps of Cadets, where he served for over 1 1/2 years with evident acceptability, threatens no injury or disruption - at least none that is suggested in defendants' presentations or imagined by the court.


Accordingly, a preliminary injunction will

-
2. At the outside, plaintiff might be held entitled to be graduated and commissioned. A lesser victory, however, might be his reinstatement as a fourth-year cadet. In the latter event, time lost now might cause irretrievable delay in completing the academic requirements.

issue requiring plaintiff's reinstatement. Departing in only this limited respect from Judge Brieant's order, the injunction now to be entered will not limit the measure of plaintiff's reinstatement pending trial and final decision of this case. If any such limitations are to be imposed, they will follow only after specific application to the court upon reasonable notice.

Settle order.

Dated: New York, New York
August 3, 1972



U.S.D.J.

PORTIONS OF
MILITARY FILE OF STEVEN F. BROWN,
AS INITIALLY FILED WITH DISTRICT
COURT

[Pages A-117 through A-200 following]



DEPARTMENT OF THE ARMY
UNITED STATES MILITARY ACADEMY
WEST POINT, NEW YORK 10996

A-117

MAJA

21 MAR 1973

SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

HQDA (DAAG-PSA-M)
WASH DC 20310

1. Transmitted herewith for approval is the summarized record of proceedings before the Academic Board in the reconsideration of the conduct case of Cadet Steven F. Brown (Incl 1), and a statement of Cadet Brown concerning his case (Incl 2).
2. The informal hearing was concluded on 9 January 1973 and was authorized by Department of the Army on 24 November 1972 (Incl 3). The hearing was conducted in consonance with the requirements set forth by the U. S. Court of Appeals for the 2d Circuit in the case of Hagopian v. Knowlton, et al. Cadet Brown was originally separated from USMA and discharged from the Army on 21 June 1972 (Incls 4, 5 & 6).
3. The Academic Board, after removing 40 of Cadet Brown's 158 demerits for the period in question, found him still deficient, the limit being 102. The Board also found that his potential did not warrant retention and again recommended separation.
4. The following are comments concerning certain matters raised in the statement by Cadet Brown (Incl 2). They are not exhaustive, and it is not the intent of this headquarters to concede matters not contained herein.

a. Regarding the reference in paragraph 3 of Cadet Brown's statement concerning the reports about two of the three cadets in Cadet Brown's car at the time of the accident, their complete reports were as follows:

FIRST CADET

AWOL, off post, intentional, aggravated by breaching confinement, misusing authority by taking advantage of knowing confidential

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SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

inspection times, unauthorized drinking in Highland Falls and taking advantage of class privileges when unauthorized.

SECOND CADET

AWOL, off post, intentional, aggravated by trafficking in alcohol not for resale, drinking in barracks, breaching confinement, and drinking in Highland Falls, N. Y. on 18 Mar 72.

b. Regarding paragraph 4, it should be noted that the first Explanation of Report (Tab C to Incl 2) omits explanation about the drinking of alcoholic beverages.

c. Regarding the matter of the qualification of members of the Commandant's Board referred to in paragraph 6, the intent of paragraph 28c of the Disciplinary System, S.O.P., is to preclude the reporting officer or an investigating officer from serving on the Board. The hearing of more than one case arising out of the same incident is not intended to be proscribed by this provision in order to insure that the matter is fully investigated and that the resolution of the several cases be mutually consistent.

d. Regarding paragraph 9f, the Commandant, during the period in question, had in effect the requirement that first classmen submit Leadership Evaluation Forms (USMA Form 2-354) on other first classmen, which requirement was his prerogative pursuant to paragraph 17.01, Regulations, USMA.

e. Regarding paragraph 16, while Cadet Brown's pay status was being considered by the Comptroller General, the Treasurer, USMA, offered him noninterest loans. Brown accepted loans in the amount of \$100 on three different occasions. Furthermore, during this period, he was given all supplies and services which are normally paid for by cadets.

f. Regarding paragraph 18:

(1) The proceedings of the board of officers appointed by the Superintendent in the spring of 1972 which considered the question of undesirable habits or traits of character on the part of Cadet Brown were conducted de novo in full accordance with paragraph 16.03, Regulations, USMA, and AR 15-6. Cadet Brown was not recommended for

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SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

separation by the Board. The record of those proceedings demonstrates full regard for individual rights and procedural fairness in such proceedings of an adversary nature at the Academy.

(2) Alternative means do exist for separation of a cadet from the Military Academy; however, they all do not incorporate adversary concepts of due process. Due process requirements for separations involving deficiency in conduct (demerits) have been fashioned recently by federal court decision. Separation for deficiency in academic courses necessarily is treated in a manner which does not contemplate evidentiary hearings. Separations for deficiency in Aptitude for the Service are akin to academic separations but require informal hearings prior to final action.

(3) References to Cadet Brown's infractions which related to his automobile accident and his appearance before a board of officers therefor that appear in the Record of Proceedings before the Academic Board were raised by Cadet Brown himself at the hearing and not initiated by the Board (Incl 1, p. 31 & Exh. G, para. 13).

g. Regarding paragraph 19a: Cadet Brown was advised by letter of 27 November 1972 as to the specific "charges" against him, i.e. his established conduct performance for the period 21 December 1971 to 7 June 1972, which inclosed a detailed list of his disciplinary offenses (pp. 6-7 to Tab B to Exh. I to Incl 1).

h. Regarding paragraph 19b:

(1) The fact that the Academic Board was reconsidering Cadet Brown's case obviates the allegation that it could not act fairly merely because it had made a prior determination based on procedures later deemed inadequate.

(2) The Academic Board is charged with the responsibility of acting upon reported deficiencies in conduct (demerits), aptitude and courses of instruction. In view of its original determinations of deficiency in conduct and in English with respect to Cadet Brown, it was not required then to address the question of deficiency in aptitude and did not do so except insofar as the report thereof related to the broad question of his potential for retention.

(3) The two members of the Academic Board named as defendants in litigation were LTC Knowlton and BG Walker. Neither was present at the hearing conducted in Cadet Brown's case by the Academic Board.

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SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

(4) It cannot be assumed that adverse publicity would have a bearing on the independent judgment of the senior officers who are members of the Academic Board as evidenced by their action in the two other cases similarly considered.

i. Regarding paragraph 19c: The allegation that Cadet Brown was prejudiced due to the time lapse between his offenses and his hearing before the Academic Board should be considered in the light of the fact that he was contesting his separation as early as 27 July 1972 when litigation was commenced.

j. Regarding paragraph 19d: The Court of Appeals in Hagopian v. Knowlton employed the words "the opportunity to appear and contest the factual basis of demerits previously awarded." (Emphasis supplied). It is thus concluded that a de novo hearing on all prior demerit awards was not required and that the Academic Board was justified in relying upon considerations of regularity in official records which established prima facie that Cadet Brown was deficient in conduct. The fact that Cadet Brown presented evidence bearing on certain demerit awards at the hearing which were ultimately removed by the Academic Board does not establish that other awards were incorrect.

k. Regarding paragraph 19e: As to the fact that the Board sustained demerit awards after Cadet Brown had submitted evidence concerning them, the Board evidently was of the opinion that such evidence was insufficient to warrant remedial action. The requirement of personal action by the Commandant on the recommendations of Commandant's Boards is one generated by the Commandant himself and is not a restriction of a higher authority. Therefore, in his relationship with a deputy, he may waive this self-imposed restriction either generally or specifically and either formally or informally.

l. Regarding paragraph 19f: The contention that counsel should have been permitted to appear at the hearing to voir dire the members of the Board and object to the proceedings on grounds of timeliness and impartiality of the Board is without merit. In emphasizing the importance of informality in the proceedings, the Court of Appeals clearly limited counsel activities to prehearing assistance in preparing a defense. In fact, however, the substance of these matters was fully considered by the Board. Cadet Brown, in effect, challenged COL MacWilliams, a member of the Academic Board, who had been the President of the Board of Officers referred to in paragraph 18 of the appeal. The Academic Board decided

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SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

that COL MacWilliams should not participate in the proceedings, and he was therefore dismissed (Incl 1, p. 5).

m. Regarding paragraph 19g: The informal, non-adversary hearing before the Academic Board was not required to be conducted in accordance with the formal investigative procedures of AR 15-6, nor was there any legal requirement for a warning of rights under the circumstances.

n. Regarding paragraph 19h: The denial of counsel at the hearing was in accordance with the decision of the Court of Appeals in Hagopian v. Knowlton which governed and took precedence over any other general authority. Paragraph 1, AR 15-6, provides that "[i]n case of conflict between this regulation and a pertinent specific regulation . . . the latter will govern." It appears that the decision of the U. S. Court of Appeals in the case of Hagopian v. Knowlton as incorporated into the authority by Department of the Army to conduct the hearing in the instant case would constitute a specific directive in conflict with AR 15-6, if it is to apply at all.

o. Regarding paragraph 19i: The failure to expend government funds to transport requested witnesses from remote locations was justified in view of the marginal value of their expected testimony and the fact that Cadet Brown and his counsel were offered an opportunity to present written statements and utilize fully government communications facilities to obtain and record information from these individuals (Incl 1, Exh. F). They declined to do so. The three witnesses requested by Cadet Brown concerned, with one exception, his potential for retention. The exception was 2LT Dull who would also have testified concerning three reports arising out of an inspection of Cadet Brown's room on 3 Mar 72 (Incl 1, pp. 13-16, & Exh. G, paras. 4-6). The three demerits received for these offenses were removed (Incl 1, p. 42). Thus, all requested witnesses to any of the awards which remain on the record appeared in person. The appearance or nonappearance of these witnesses during the potential phase is fully discussed in the record (Incl 1, pp. 64-67). The Academic Board fully considered this aspect of the matter and determined that their presence was not warranted under the circumstances.

5. It is considered that by any margin of measurement, Cadet Brown was accorded due process in this matter. The fact alone that the Academic Board devoted over 25 hours in actual hearings or in closed session in this case negates any allegation that fair and thorough consideration was not given to the case.

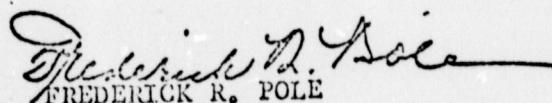
MAJA

SUBJECT: Reconsideration of the Case of Cadet Steven F. Brown

6. It should be noted that the original request for separation also included a deficiency in First Class English (EN 402). This course subsequently was completed successfully by Cadet Brown in the first term of the current academic year, and he has been given credit therefor, along with credit for other new courses taken in that term.

7. The recommendations of the Academic Board, if approved, should be referred to the Department of Justice to facilitate termination of the current litigation and thus permit final disposition of Cadet Brown's case as soon as possible.

FOR THE SUPERINTENDENT:


FREDERICK R. POLE
LTC, AGC
Adjutant General

6 Incl

1. Record of Proceedings
2. Statement of Cadet Brown
3. Ltr DAPE-PDO 24 Nov 72
4. Ltr MADN-1 6 Jun 72 & amdt 9 Jun 72
5. 1st Ind DAAG-PSA-M 16 Jun 72
6. Extract SO 123 Hq USMA 23 Jun 72



DEPARTMENT OF THE ARMY
UNITED STATES MILITARY ACADEMY
WEST POINT, NEW YORK 10996

A-123

MADN

23 February 1973

SUBJECT: Rehearing of Case of Cadet Steven F. Brown

Superintendent
United States Military Academy
West Point, New York 10996

1. Transmitted herewith is a summarized record of the subject case heard by the Academic Board on 21 and 22 December 1972 and 9 January 1973 at which I was the presiding officer and which record is correct to the best of my knowledge and belief.
2. The Academic Board found Cadet Brown deficient in conduct for the period 21 December 1971 to 7 June 1972 and without potential to warrant retention at the Military Academy. Accordingly, the Board recommended that Cadet Brown be separated.

1 Incl
Record of Proceedings

John R. Jannarone
JOHN R. JANNARONE
Brigadier General, USA
Dean of Academic Board

Incl 1

U. S. Savings Bonds are Shares in America

SUMMARIZED

REPORT OF PROCEEDINGS OF THE ACADEMIC BOARD

RE:

Cadet Steven F. Brown
Company F-2, United States Corps of Cadets
West Point, New York 10997

CONVENED

21 December 1972

The Academic Board convened at the Faculty Lounge, Building 600, West Point, New York, at 0920 hours on 21 December 1972. The following members were present:

BG John R. Jannarone
BG Philip R. Feir
Col Edwin V. Sutherland
Col John S. B. Dick
Col Frederick C. Lough
Col Charles H. Schilling
Col Elliott C. Cutler
Col Donald G. MacWilliams
Col Sumner Willard
Col Frederick A. Smith
Col Thomas E. Griess
Col Edward A. Saunders
Col Lloyd B. McCabe
Col Gilbert W. Kirby
Col Lee D. Olvey

Also present were:

Col Manley E. Rogers, Secretary to the Academic Board; and

Maj David L. Cole, Assistant to the Secretary to the Academic Board.

The Dean of the Academic Board opened the hearing and Cadet Steven F. Brown reported. The Dean advised Brown that the Academic Board, under authority of Department of the Army instructions, had convened to reconsider his reported deficiency in conduct. Brown was told that he would be permitted to be present during all open sessions of this hearing. The Dean added that Brown had been notified of this hearing, and had been advised that the hearing would be informal in nature, by letter

of 27 November 1972. All correspondence in the case was introduced and directed to be placed in the record as exhibits.

The Dean then directed that each member of the Board read paragraph 3 of the 1st Indorsement, 4 December 1972, to the 27 November letter. On completion of this reading, the Dean then polled each member of the Board to determine whether each could reach a fair and impartial decision in the case. All members indicated that they could, following which they were instructed to read paragraph 1 of the 1st Indorsement, 4 December 1972. Again following completion of this reading, each member was asked to raise his right hand if he believed that a fair hearing could be held in spite of the time lapse between the offenses and the present hearing. All members indicated that a fair hearing still could be held. Based on the Court's opinion, to wit: "Importance of informality in the proceedings militates against a requirement that the cadet be accorded the right to representation by counsel before the Academic Board. Unlike the welfare recipient who lacks the training and education needed to understand his rights and express himself, the cadet should be capable of doing so," the Dean explained to Brown that counsel would not be allowed to be present during the hearing. The Dean added that the conduct of the hearing was being guided by the Court's opinion. Brown was told that he should feel free

to ask questions at any time, that the Dean or other Board members would help him develop specific lines of thought or formulate any questions whenever asked to do so or when otherwise the need for such assistance was clear. It again was emphasized that the hearing would be informal in nature. At this time, the 4th Indorsement (21st Dec 72) to the 27 November letter was distributed to each member of the Board and to Cadet Brown. None had read it previously because Brown's 3d Indorsement had not been received until approximately 1730 hours on 19 December 1972, although, as it was explained to the Board, Brown was responding to a 2d Indorsement dated and delivered 8 December 1972.

Following the reading of this 4th Indorsement, the Dean indicated that the Board would consider the information contained in the completed USMA Form 2-10 (Record of Demerits) which showed that Brown had received 158 demerits against an authorized allocation of 102 (Regulations, USCC, paragraph 408), and thus was 56 demerits over his allowance. Brown was instructed to proceed.

At 0930 hours, Cadet Brown requested a postponement of the hearing for the following reasons:

1. Questions asked in his 3d Indorsement had not been answered prior to the hearing.
2. Copies of USMA Forms 2-1 (Delinquency Reports) were not made

available to him until late in the afternoon, 20 December 1972, and therefore, he had not been afforded sufficient time to review all of them to his satisfaction.

3. He had not been given sufficient time to obtain statements from witnesses not stationed at West Point.

4. He had not been provided a copy of a certain research paper, an item for which he had been reported.

5. He was preparing an affidavit which had not yet been completed.

6. He had not been provided a copy of the Regulations, USCC, which had been in effect during the period in question.

Brown indicated that the hearing probably should be postponed until some time after Christmas leave. It was pointed out to Brown that his 3d Indorsement to the 27 November letter, although dated 18 December 1972, was not received by S1, USCC until 1730 hours on 19 December 1972.

Brown acknowledged that this was correct. Brown also acknowledged that counsel had been made available to him as noted in the 27 November 1972 letter which he acknowledged having received. At 0955 hours, the Dean indicated that the Board would recess until 1300 hours. Because he had only examined twenty-five out of the twenty-eight Forms 2-1 which were available, Brown requested additional time. He testified that he was not aware that the 2-1's had been available to him on 18 December 1972 for

review. The Board recessed until 1300 hours.

At 1304 hours, the Academic Board reconvened. All persons present prior to the recess again were present. Asked whether he objected to being sworn, Brown replied that he did not and therefore, he was sworn in at 1307 hours.

Discussion turned to the 3d Indorsement (18 December 1972) to the 27 November letter in which Brown had indicated that at least one member of the Academic Board previously had heard and considered extremely derogatory opinions expressed concerning him by his former Company Tactical Officer. When asked who that member was, Brown stated that Colonel Donald G. MacWilliams had been the president of the Board of Officers which had considered his possible separation for habits and traits (paragraph 16.03, Regulations, USMA). Brown requested that Colonel MacWilliams not be allowed to sit on the Academic Board for this hearing.

At 1310 hours, the Board went into closed session. Cadet Brown and Major Cole were not present. At 1315 hours, the Board reconvened and Colonel MacWilliams was dismissed.

Brown requested that the Board consider testimony from witnesses on his potential for retention prior to considering his reported deficiency

in conduct. He added that he was not waiving his right to object to the fact that three witnesses of his choice--Lt Dull, Lt Cook, and Ensign Coonan--were not present. In addition, he indicated to the Board that his affidavit would soon be completed.

The Dean read a portion of the court order which stated that the Academic Board has two functions: First to consider Brown's deficiency in conduct and second to consider his potential for retention. The Dean added that he did not believe it to be appropriate to reverse the Court's expressed view of the order in which these two aspects should be considered. Asked whether he had been given ample opportunity to get in touch with those witnesses not stationed at West Point, Brown replied that he had not had sufficient time to obtain written statements. Subsequently he stated that he did not know whether his counsel had requested written statements from these witnesses. Asked whether he had been allowed sufficient time to obtain witness statements, Brown replied that he had not.

Brown stated that his primary reason for requesting the reversal in the prescribed procedure was that his affidavit was not yet completed. The Dean then indicated that the Board would consider hearing Lt Kruger's testimony on potential for retention as an exception to established procedure. At 1327 hours, the Board went into closed session. Cadet

Brown and Major Cole were not present. At 1332 hours, the Board reconvened and the Dean stated that the Board, as to a one-time exception, would hear Lt Kruger's testimony on potential.

At 1333 hours, 2Lt Carl M. Kruger, Infantry, reported to the Board and was sworn in. Lt Kruger indicated that he presently was a student assigned to the 3d Ranger Company, Fort Benning, Georgia. He stated that he had been Brown's roommate during fourth class year and his company mate the remaining years. Brown was instructed to proceed. Brown asked Lt Kruger to discuss his (Brown's) demonstrated performance and potential for retention. Lt Kruger indicated to the Board that he had observed Brown both in and out of chain of command positions, and added that Brown's performance was equal to that of other cadets. He stated that as a platoon leader Brown performed well, that he counseled members of his platoon who were having problems, and that his ability to communicate with people was excellent. Lt Kruger said that Brown had done a good job of communicating with his subordinates and that he had performed well as a cadet platoon leader. Lt Kruger indicated that as a squad leader, Brown also had done a good job and that he had been effective in dealing with those cadets in his squad who were encountering difficulty. Brown having no questions, Lt Kruger was dismissed.

Because the affidavit which Brown was preparing was not yet complete,

the Board recessed at 1444 hours. At 1500 hours, the Board reconvened. All persons present prior to the recess again were present. Brown's signed affidavit was distributed to each member of the Board and was entered into the record as Exhibit G. Asked whether he had any objections to the members of the Academic Board being allowed to see the original or reproduced delinquency reports (2-1's), Brown replied that he did not. The 2-1's for offenses reported during the demerit period in question then were entered into the record as Exhibit H. Brown indicated to the Board that he could not remember any of the facts surrounding the offenses mentioned in paragraph 1 of the affidavit. He stated that he did sign the 2-1's, however, added that he did so only because it was the normal administrative procedure for a cadet to do so. Brown stated that cadets often accepted demerits rather than contest them in order to avoid possible conflict with the Tactical Officer. He added that it was conceivable that a cadet could cause such a conflict if he submitted an excessive number of Reconsiderations of Award. When questioned on the "articles improperly displayed" offense, Brown replied that he now could not say whether the report was correct but could only testify that he did not recall the offense. He added that he may have gone to the Cadet-in-Charge of Quarters to determine what the offense was but that in all probability he was not particularly interested at the time whether the report was

correct because the number of demerits involved was small. To illustrate the point further, Brown stated that he was reluctant, for example, to challenge his Tactical Officer when reported for needing a haircut because to do so would appear to be questioning the Tactical Officer's judgment, a report for a haircut being based primarily on judgment. He acknowledged the fact that the haircut standard was normally established by the Tactical Officer, but added that haircut standards are rather nebulous and that interpretation of the policy varies over a rather wide range.

A member of the Board noted that Brown earlier had signed the 2-1's as being correct, but that now, with circumstances altered and the significance of each 2-1 much greater, he had signed an affidavit stating that the offenses were not in fact correct. The question followed, "Are we to believe that your signature is correct, and if so, which signature?" Brown replied that it was accepted practice simply to sign the 2-1's rather than go to the trouble of submitting a Reconsideration of Award and that his signature on the back of a 2-1 meant that the statement there reading, "I have no excuse" is what he was indicating as being correct, and not that the offense itself was correct. Asked whether the validity of his signature depended on his current status in demerits, Brown replied that his signature on 2-1's only acknowledged receipt of the demerits. Brown indicated that if he were required to write in

the words "correct" or "incorrect," or "intentional" or "unintentional," that his signature then would really mean what was intended. Asked if his signature were valid only for what he personally had written in, with reference being made to contracts and the like, Brown replied, "Yes, that is just the way the system is." Brown was asked what he wanted the Board to do; how did he wish the Board to view the fact previously he had indicated that the reports were correct and that now he was indicating they were not correct. Brown replied that he was not saying that the reports were incorrect, rather that he was trying to say that he could not remember the offenses. The Board asked what weight he desired to be placed on the signed 2-1's and were they, in fact, valid. Brown replied that some were correct and some were incorrect, and that he did not know which ones were correct. Next he was asked whether it was fair for the Board to presume that the offenses were correct. Brown replied that it was not. He added that at the present time, he did not know whether they were correct and that he only was acknowledging receipt. He indicated that there were questions which needed to be answered because many of the offenses were not fresh in his mind. He added that when he reviewed his demerits with the Assistant S1, USCC, he had a fair idea of what they were about. Brown indicated that he normally signed the 2-1's only in the sense that he was accepting the demerits; however as time passed became more aware of how properly to

alter preprinted statements in an appropriate way prior to signature. Brown indicated that the majority of cadets would say that when they sign a 2-1, they do not pay any attention to the phrases on the back of the 2-1, for example the statements there reading, "The report is correct" and "the report is unintentional." Brown stated that demerits really only matter when one finds himself close to exceeding his allowance. He added that the "I have no excuse" preprinted statement which also appears on the back of the 2-1 covers reports considered to be either correct or incorrect. Asked whether he had signed the 2-1's for all offenses in paragraph 1 of his affidavit, Brown replied that he had. Brown indicated that he had not contested any of these offenses earlier because he had not had sufficient time. Asked whether his argument was the same for all offenses mentioned in paragraph 1 of the affidavit, Brown replied that it was.

He indicated that on the day following his departure on leave, pending approval of his separation, he had returned to West Point in order to seek assistance from counsel in the preparation of his Reconsiderations of Award. He indicated that counsel had been officially discouraged from helping him prepare these reconsiderations. The Dean indicated that this was the express purpose of this hearing--to rectify that earlier situation and to allow Brown to appear before the Board and to call witnesses to testify in his behalf. Brown stated that it was common

belief among cadets and officers that a signature on the back of the 2-1 only indicated that the cadet was accepting the demerits and that the printed portion on the back of the form was neither important nor pertinent. Brown had nothing further to offer with respect to the offenses mentioned in paragraph 1 of the affidavit. It was mutually agreed by Brown and the Board that witnesses would be called later to discuss the meaning of a cadet's signature on the back of the 2-1.

Discussion then turned to the offense addressed in paragraph 2 of the affidavit. Brown indicated that he did not have First Class Privileges (FCPs) during the week in question and that drinking alcoholic beverages was in fact a First Class Privilege. Brown stated that a Daily Bulletin announcement on the day of the reception had stated for emphasis that those cadets without FCP's were not authorized to drink, but added that he had not seen the announcement until after he had returned from the reception. Although Brown acknowledged that he had nothing to offer not previously considered by the Cadet Board (a copy of the Cadet Board Report was available to the Academic Board and Cadet Brown), he did reiterate for emphasis that the Daily Bulletin containing this announcement was dated 16 February 1972 (the day of the reception), that the DB had been posted late in the day of the 16th, and that he had read a DB that morning as required (all cadets being required to read the DB daily). Brown also

stated that following a discussion with his Company Commander, he was led to believe that he was authorized to attend the branch reception even though he did not have First Class Privileges. Brown stated that he knew of other cadets without First Class Privileges who had attended the reception, consumed alcoholic beverages, and yet were not reported for the offense. He did not recall the names of these cadets. Brown had nothing further to offer with respect to this offense.

At this point, discussion turned to the offense addressed in paragraph 3 of the affidavit. Brown stated that the Company Departure Book was the only official log in a cadet company, and although the Classes Missed Book was helpful, it was not official. Brown indicated that he had been reported for indicating the wrong course number even though he believed that it was not a requirement to indicate the course number. He said that the cadet administrative officer had strictly enforced the policy of making proper entries in the Classes Missed Book.

Discussion turned to the offense addressed in paragraph 4 of the affidavit. Asked whether he had submitted a Reconsideration of Award at the time, Brown replied that he had not. Brown indicated that he believed his roommate, Cadet Dull, was the room orderly on the day in

question. Brown indicated that he had signed the 2-1 indicating that he had no excuse because he did not want to go to the trouble of submitting a Reconsideration of Award. Brown acknowledged that he had signed the 2-1 indicating he had no excuse even though he, in fact, did.

Discussion turned to the offense mentioned in paragraph 5 of the affidavit. Brown stated that he had been reported for overcoat improperly displayed when, in fact, the overcoat belonged to his roommate, Cadet Dull. He added that he remembers this particular offense because he had discussed it with Cadet Dull at the time. Discussion followed on the arrangement of coats within the cadet locker and how Brown could have mistakenly been reported for the offense.

Discussion turned to the offense mentioned in paragraph 6 of the affidavit. Brown again stated that his roommate was the room orderly and that it was his responsibility to insure that the waste basket was empty of all trash. He added that he had accepted the demerits for his roommate because already he was in confinement for three weeks and therefore the demerits made little difference to him at the time. He added that now he did not think it was right for him to receive demerits which should have been awarded to his roommate. He indicated that the duty of room orderly changed each Saturday at noon, and

that he and his roommate always insured that the room orderly card was changed and placed in the appropriate slot. Asked whether he had accepted the demerits in agreement with his roommate, Brown replied that this had not been the case. Brown indicated to the Board that he no longer desired to contest the award of 22 February.

Discussion turned to the offense addressed in paragraph 7 of the affidavit. Brown indicated that at a meal formation his Tactical Officer had called him out of the formation to talk to him. Some time later he discovered that he had been reported for wearing an improperly adjusted belt. He stated that his belt was adjusted in the same manner as his company commander's and that it was the first time he remember anyone being reported for this offense. Brown stated that he did not recall what his Tactical Officer had mentioned to him when he called him out of formation. He added that it was possible that his Tactical Officer had mentioned his improperly adjusted belt, however, he could not remember.

Discussion turned to the offense mentioned in paragraph 8 of the affidavit. Asked whether he had signed the 2-1 for this offense, Brown replied that he had. With respect to this offense, Brown stated that he did not remember whether he was reported before or after taps, however, it was dark outside. Brown stated that the Officer-In-Charge was

inspecting his company; that when he inspected Brown's room the lights were on, one roommate was sleeping, one roommate was studying, and that he, Cadet Brown, was lying on top of the bed. He stated that he believed the Officer-In-Charge merely looked into the room, but that he may have said something to the roommate who was studying. Brown stated that it was reasonable to assume that he was asleep, however, in fact he was not. He stated that he was contesting the award even if the offense had occurred after taps because he was not sleeping. He merely was lying on the bed. He stated that on previous occasions he had slept on top of the bed without properly preparing it in accordance with regulations.

Discussion turned to the offense addressed in paragraph 9 of the affidavit. Brown stated that on the day in question he had not worn a tie when he went to breakfast in the Staff Dining Room. He indicated that he did not consider the Staff Dining Room to be a public area because it was used primarily only by employees of the Cadet Mess. He did not recall whether there was a visitor in the Staff Dining Room that particular morning. Asked whether he thought it was permissible to go to breakfast in the Staff Dining Room without a tie, Brown replied that he thought it was. He did not consider it a serious offense because he was wearing a gray jacket over his shirt at the time. He

acknowledged that even though living in the Boarder's Ward, that he was still a cadet, and he added that it was common for cadets in the Boarder's Ward to wear only a parka and a shirt with no tie. Asked whether he had signed the 2-1 for this offense, Brown replied that he had. Brown stated to the Board that he no longer desired to contest the 24 April offense.

Discussion turned to the offense addressed in paragraph 10 of the affidavit. Brown stated that on the day of the offense he was sleeping. He believed that he was authorized to do so because cadets in the Boarder's Ward are required only to maintain their rooms in PMI order and that when in PMI order a cadet is authorized to sleep prior to 1030 hours. He stated that his comforter was not folded at the bottom of his bed because he was using it to cover himself while he slept. He did acknowledge that his clothes were improperly displayed and asserted that this was the only discrepancy that should have been reported. Considerable discussion followed on the condition of a cadet room in PMI order.

The Dean stated that the Board would discuss this offense at a later time when appropriate regulations convering the definition of PMI order could be made available to members of the Board. The offense mentioned in paragraph 11 of the affidavit was directly related to the

offense previously mentioned in paragraph 10. Accordingly, the Dean indicated that discussion on this offense would be deferred until a later time.

Discussion then turned to the offense mentioned in paragraph 12 of the affidavit. Brown stated that although not required, he had typed the Explanation of Report. He acknowledged that it was not a perfect typing job and that there were obvious mistakes. There was no further discussion of this offense.

The Board next considered the offense addressed in paragraph 13 of the affidavit. Brown stated that he did not consider the 5 May award to be just because it had been considered subsequently by a Commandant's Board. He stated that although the record indicated that Major Comello had crossed out and initialed the alleged absence of 5 May, he believed that this line-through occurred after the Commandant's Board had considered the absence as part of a string of several absences and had made its recommendation.

Brown stated that he believed it had not mattered whether he went to class since he was to be turned back to the Class of 1973. He acknowledged that Major Comello had informed him of the requirement to attend classes when attendance would not be in conflict with Board proceedings. Asked

whether he had been "advised" to attend class or "admonished" to attend class, Brown replied that he had been admonished. There was no further discussion on this offense. Asked whether he objected to the Academic Board also calling cadets to testify on the meaning of the signature on the back of the 2-1, Brown replied that he did not. The Board recessed at 1803 hours to reconvene at 1930 hours.

The Board reconvened at 1944 hours. All persons present prior to the recess again were present. Brown stated that he preferred to hear the witnesses called by the Academic Board prior to hearing the witnesses he had gathered. The Dean replied that since Brown rather than the Board had made the initial suggestion that other cadets be heard on the meaning of the signature that the Board would call his witnesses first.

At 1947 hours, Cadet Robert Skiver, Company F-2, Class of 1973, reported to the Board and was sworn in. Skiver stated that presently he was Brown's roommate. In response to a question, he testified that during the first term of this year he was the Company F-2 Administrative Officer and thus was directly responsible for the processing of all 2-1's in the company. He stated that he suspected that 75% of the cadets signed the back of the 2-1 without paying particular attention to the statements printed thereon. He added that more often than not,

to avoid the possibility of appearing to harass the Tactical Officer, cadets tend simply to sign the report, especially if not close to exceeding their demerit allowance. Asked whether he believed there was a connection between the printed statement, "The report is correct," and the signature, Skiver replied that admitting to something you did not really do is not considered bad (as opposed to denying something actually done), and that this was a universal attitude among cadets. He stated that if cadets believed themselves to be lying by signing under these conditions they would not do it. Asked whether he believed it to be unreasonable for someone to challenge the correctness of demerits after previously indicating that they were correct, Skiver replied that he did not. On the other hand, he said that normally cadets do not attempt to have demerits removed after they have accepted them and that most cadets would accept losing their privileges rather than contesting a previously accepted award. When asked if the meaning of the signature was clear to him, Skiver replied that it was; however, that the perception of the signature on the back of the 2-1 was somewhat contrary to this meaning and repeated that cadets do not perceive signing for demerits, which in fact are not correct, as being dishonorable. Skiver again stated that as a philosophical matter he saw nothing dishonorable about admitting guilt when not in fact guilty. Given a hypothetical situation wherein a cadet had received a deficient grade in academics and later

decided to challenge this grade at a time when there was no evidence available to either the cadet or the instructor, Skiver stated that under these circumstances he would expect the cadet to be stuck with the deficient grade. Skiver stated that if an award of demerits would be enough to put a cadet on the area or in confinement, that he normally would not sign the back of the 2-1 indicating the report was correct when in fact the report was not correct, nor would a cadet sign the 2-1 if it meant loss of privileges if the report were not in fact correct. Becoming specific, Skiver indicated that if a cadet had between five to seven demerits and then were reported for an offense that would result in loss of privileges or punishment tours, that he probably would not sign the report if it were incorrect. At 2033 hours, Cadet Skiver was dismissed. Brown having no questions.

At 2035 hours, Cadet Captain Joseph P. Tallman, First Captain, Class of 1973, reported to the Board and was sworn in. Tallman informed the Board that he did not know Cadet Brown. Asked whether he would sign a 2-1 indicating that the report was correct when, in fact, it was not correct, Tallman replied that he would not. He cited a personal experience when as a Fourth Classman he had not signed a 2-1 because the report was not correct. He stated that when he signed a 2-1, it indicated that he had committed the offense. On the other hand, he qualified this general

statement by indicating that for insignificant, single demerit offenses, a cadet might sign the 2-1 even though it may not be correct rather than going to the trouble of submitting a Reconsideration of Award. Tallman stated that he did not think anyone could argue that there was no relationship between the printed phrases on the back of the 2-1 and the cadet's signature. He believed that it was a common belief among cadets that the signature was directly related to the printed phrases. Tallman stated that once a cadet had signed for a particular offense, that those demerits were his forever and that once having signed for the award, the demerits rightfully belong to the cadet concerned. At 2045 hours, Cadet Tallman was dismissed, Brown having no questions.

At 2047 hours, Cadet Private Charles B. Skaggs, Company I-3, Class of 1975, reported to the Board and was sworn in. Skaggs indicated that he did not know Cadet Brown. Asked whether he believed that the signature on the back of a 2-1 was related to the three printed statements on the form, Skaggs replied that he did. Skaggs stated that some cadets may in fact sign an incorrect report rather than submit a proper explanation, but that as far as he personally was concerned, if he knew a report was incorrect, he would not sign the 2-1 regardless of whether it occurred late in the month or the number of demerits awarded were insignificant. Asked whether he believed himself to have any recourse

after he signed for demerits which were not his, Skaggs replied that technically, he did not; however, if he discovered it early and considered it important, he would talk to his Tactical Officer. He added that he would do it immediately if the demerits would put him over his authorized allowance. Asked whether, if at the end of the month it developed that he had exceeded his demerit allowance, he would go to his Tactical Officer and contest demerits awarded earlier in the month, Skaggs replied that he would not. Cadet Brown asked if at the end of the semester he, Skaggs, had exceeded his demerit allowance for the term, would he contest demerits that had been awarded during the demerit period, Skaggs replied that it would not be right to contest awards for which one previously had signed because it would be going back on the earlier decision to accept the demerits. At 2105 hours, Cadet Skaggs was dismissed, Brown having no further questions.

At 2110 hours, Captain Robert W. Higgins, IN, reported to the Board and was sworn in. He stated that his present duty assignment was Assistant S1, USCC, and that he knew Cadet Brown. Asked to define the meaning of PMI order, Captain Higgins replied that the room must be neat, bed made, locker doors closed, and the cadet in a proper uniform. He added that the basic difference between PMI and AMI order was that

locker doors would be closed during PMI order. Captain Higgins indicated that a cadet in a standard cadet company could not go to bed until after 1030 hours. He stated that rooms in the Boarder's Ward were to be kept in PMI order at all times and that whether a cadet could sleep while in the Boarder's Ward was a function of the reason he was there; that cadets who move to the Boarder's Ward for reasons other than routine were given special instructions peculiar to their situations. Captain Higgins stated that while in the Boarder's Ward, a cadet still was subject to and expected to comply with Regulations, USCC. Brown stated that he was moved to the Boarder's Ward sometime during spring leave and that it was explained to him why he was being moved to the Boarder's Ward. He recalled being told that it would be in his best interests to keep up with his academics. At 2130 hours, Captain Higgins was dismissed, Brown having no questions.

At 2143 hours, Colonel Richard L. Gruenther, IN, reported to the Board and was sworn in. He stated that his present duty assignment was Director of Office of Military Instruction and that he had been the President of the Commandant's Board before which Brown appeared for the 23 May offense, an offense which included repeated absences from class.

Discussion turned to the offense of 5 May. Cadet Brown stated that the

5 May offense had been charged against him twice in that he had received eight demerits for being absent (unintentional) from class on 5 May and that subsequently a Commandant's Board also had considered the 5 May absence as one of the string of several absences mentioned previously. Colonel Gruenther stated that when the Commandant's Board considered the absences from class, it did not consider the 5 May offense because Brown already had received punishment for that particular offense. Colonel Gruenther stated that Brown offered no excuse, other than insomnia, for the absences from class. Colonel Gruenther added that at no time did Brown tell the Board that he was authorized to miss the classes. He indicated that the Board concluded that Brown was aware that he was required to attend classes and added that Brown had indicated that he had attended breakfast formation and then not attended classes on the days in question. Asked whether a difference of one or two absences either way would have made a difference in the Board's recommended punishment, Colonel Gruenther replied that it would not.

Colonel Gruenther added that had Brown shown the Board that his absences were due to a medical problem that the Board undoubtedly would have dismissed the case; however, Cadet Brown offered no such proof. The fact that he could get up for breakfast but not for class

also was a factor in the assessment. Brown again stated that he had been advised that it was in his best interests to attend classes. Colonel Gruenther stated that he believed that during this period it was the Commandant's policy that cadets quartered in the Boarder's Ward for a prolonged period of time were required to attend classes. Cadet Brown stated that he had been informed by the S1, USCC, that he would be moved to the Boarder's Ward and that the best he could expect would be a turn-back, the worst an "Other than Honorable" discharge. Colonel Gruenther again stated that during the Commandant's Board, the 5 May absence was not considered. He reiterated that one or two absences either way would not have changed the Board's recommendation. It was pointed out that Brown had stated in his explanation of report of 24 May 1972 that he was absent from class on all of the indicated dates. At 2252 hours, Colonel Gruenther was dismissed, Brown having no questions.

At 2254 hours, LTC Andrew R. Foster, FA, reported to the Board and was sworn in. He indicated that his present duty assignment was S4, USCC. LTC Foster stated that he had reported Brown on 18 April 1972 for improper uniform in a public area. LTC Foster explained on the day in question he, LTC Foster, was escorting a civilian guest to the Staff Dining Room for breakfast and that as he and his guest entered the Staff Dining Room he observed a cadet not wearing a tie. He noticed by the name tag that it was Brown. He stated that he informed Brown

that he was reported and that Brown should return to the Boarder's Ward and get into the prescribed uniform. He stated that Brown did not have an outer garment with him. Asked why he considered the Staff Dining Room to be a public area, LTC Foster replied that frequently visitors from outside USMA as well as salesmen and other civilian persons in the process of conducting business with officials of the Cadet Mess use the Staff Dining Room. At 2310 hours, LTC Foster was dismissed, Brown having no questions.

Brown indicated that he no longer desired to contest the 12 May award.

Discussion turned to the offense mentioned in paragraph 14 of the affidavit. Brown indicated that he was contesting the award on the grounds that the Deputy Commandant had changed the finding of the Commandant's Board, an act not within his authority. He stated that he had been awarded fifteen demerits, twenty-two punishments, and one month confinement in lieu of the Board's recommendation of fifteen demerits and twenty punishment tours. He said that he was not contesting the award of fifteen demerits, rather that the punishment had been changed to include one month's confinement. He pointed out that this escalation of punishment caused this particular Board to be classified as a Commandant's Board, a fact which caused a subsequent Board to award a heavier punishment than would otherwise have been the case. He stated that the changing of the Board's recommendation resulted in his receiving forty-five demerits

rather than thirty from this subsequent Commandant's Board. Discussion followed on whether the Deputy Commandant had the authority to change the findings of a Commandant's Board.

Asked whether he had anything further to offer on the offense mentioned in paragraph 15 of the affidavit, Cadet Brown stated that he did not and that sufficient discussion had already taken place on that particular offense.

At 2342 hours, the Board went into closed session. Cadet Brown and Major Cole were not present during this session. At 2350 hours, Cadet Brown and Major Cole were called back into the Faculty Lounge and the Board was reconvened. Asked whether he had any objections to the Board recessing until after the holiday period, Brown replied that he preferred to have the Board continue with the hearing until finished. The Dean pointed out to Brown that many of the witnesses would not be available during the leave period and asked whether Brown wanted the Board to hold these witnesses at West Point. Brown replied that he did not. The Dean added that the Board was willing to recess until after the holidays for the convenience of Brown and the witnesses. It was further explained to Brown that the Board would continue to meet in closed session in an attempt to resolve his deficiency in conduct. The Dean added that the Board would consider all testimony already presented on the contested

awards, however, would not call any witnesses without Brown being present. Brown stated that he desired to call his counsel to discuss this matter and the Board recessed at 2400 hours to allow him to do so. At 0013 hours, 22 December 1972, Brown returned to the Faculty Lounge, reported to the Dean, and the hearing was reconvened. All persons present prior to the recess again were present.

Brown stated that he desired the Board to reach a decision on the contested demerits prior to the start of Christmas leave. Brown asked whether any additional witnesses for potential could be called after Christmas leave. He was told that he should feel free to obtain additional witnesses as he desired, but that presently the Board had no intention to call any additional witnesses for potential. The Dean told Brown that the Board would go into closed session at this point, and further stated that the Board would convene again in closed session at 0800 hours, 22 December 1972. He added that Brown would be notified not later than 1130 hours, 22 December 1972, as to the status of the Board's consideration of the contested demerits. The Board went into closed session, Brown having no questions.

At 0800 hours, 22 December, the Board reconvened in closed session. All members present prior to the recess again were present. Cadet Brown and Major Cole were not present during the closed session.

At 1055 hours, 22 December 1972, Cadet Brown and Major Cole returned to the Faculty Lounge. Brown reported to the Dean, after which the Dean indicated that after careful consideration of testimony already presented the Academic Board had decided that it was imperative that Major Jerome Comello be called as a witness in order to resolve certain conflicts and discrepancies which apparently could be resolved in no other way. Brown acknowledged that Major Comello would appear as a witness for this purpose. The Dean added that the Board desired to meet at 1300 hours, 2 January 1973, to which Brown replied that he would not be in the immediate area on 2 January. Asked whether there was any reason he could not change his plans and be at West Point on 2 January 1973, Brown replied that he was not sure where he would be, and that if at some distance (Florida was mentioned as a possibility), the cost would prohibit him from making the trip. Brown was offered the use of government aircraft or vehicles to make the trip; however, he still objected to continuing the hearing on 2 January 1973. A member of the Board told Brown that the Board was not trying to deceive or trick him; that its only concern was to conduct a fair and timely hearing on his case. Brown persisted in his objection to the hearing being conducted on 2 January 1973. At 1103 hours, the Board went into closed session. Cadet Brown and Major Cole were not present during the closed session.

Cadet Brown and Major Cole were called back into the Faculty Lounge at 1111 hours. The Dean stated that the Academic Board was prepared to meet on 2 January; however, because Cadet Brown had objected to that date, the Board would meet on 9 January to continue with Phase One (Deficiency in Conduct) and that if the decision were adverse it would proceed directly to Phase Two (Potential for Retention). The Board was adjourned at 1114 hours, 22 December 1972, to reconvene at 0800 hours, 9 January 1973, Brown having no questions.

At 0827 hours, 9 January 1973, Brown reported to the Board and the hearing was reconvened. (The Board was prepared to reconvene at 0800 hours, as earlier directed, however, there was a delay caused by the fact that Brown reported twenty-five minutes late.) Brown reported to the Dean and was reminded that he still was under oath. All persons present prior to the recess again were present.

The Dean referred to paragraph 13 of the affidavit in which Brown had stated that the proceedings of the 16.03 Board, which had been convened to determine whether he would be separated for undesirable habits or traits, terminated in his favor on 26 April 1972. Asked to explain what he meant by this statement, Brown replied that the Board recommended that he not be separated, rather that he be suspended and turned back to the Class of 1973. It was for this reason, that the Board results were

suspension and turn-back rather than separation, that Brown considered the results of the Board to be favorable.

At 0832 hours, Major Jerome J. Comello, IN, reported to the Academic Board and was sworn in. He stated that his present duty assignment was as a student at the Naval War College in Newport, Rhode Island. He indicated that when assigned to West Point as an Assistant S1, USCC, he was responsible for the Boarder's Ward and all cadets quartered therein. He stated that for practical purposes he had served as Brown's Tactical Officer during his stay in the Boarder's Ward. Major Comello stated that during March 1973, Brown had been involved in a serious disciplinary infraction and had been offered the option to resign or appear before a Board of Officers. He added that Cadet Brown chose to appear before a Board of Officers and therefore had been moved into the Boarder's Ward pending disposition of his case. Major Comello said that during the period of time that Brown resided in the Boarder's Ward, he committed several offenses which caused him to accumulate a demerit total in excess of his term allowance and ultimately to be declared deficient in conduct. Major Comello stated, however, that Brown had been suspended from the Military Academy for involvement in the serious disciplinary incident mentioned previously. Major Comello then explained that when a cadet was moved to the Boarder's Ward for a serious disciplinary action

or honor violation, that he always was briefed on his status by an officer in the office of the S-1, USCC. He added that such cadets always were given detailed instructions and were specifically informed that while in the Boarder's Ward they would conduct themselves as they would in their regular cadet company. He added that they were instructed to indicate in the book provided their departure and return when leaving the Boarder's Ward, and that they were subject to inspection by members of the guard detail and the Officer-In-Charge at any time. Major Comello stated that the S-1, USCC, had informed Cadet Brown that he would attend all academic classes except those conflicting with appearances before the 16.03 Board of Officers. Major Comello stated again that a cadet quartered in the Boarder's Ward for serious disciplinary problems or an honor violation were expected to live under the same restrictions as a cadet in a regular company. He stated that he had not specifically informed Brown that he could not sleep in his room prior to 1030 hours because he believed that it was implicit in his instructions that he would be subject to the same restrictions as a cadet in a regular company. He stated that the instructions to cadets quartered in the Boarder's Ward for the purpose of routine out-processing were not the same as those issued to cadets quartered in the Boarder's Ward pending final disposition of an administrative action; that the latter were given more comprehensive and detailed instructions based on their specific situation. As

an individual in the latter situation, Major Comello stated that Brown had been instructed that he must maintain his room in PMI order and added that he did not have license to lie on his bed prior to 1030 hours, restrictions on this particular point applying to him as much as to any other cadet at this time. Major Comello stated that he assumed Brown understood that he could not sleep prior to 1030 hours because he had been briefed that he was required to comply with all cadet regulations while quartered in the Boarder's Ward. Major Comello stated that after Brown had been reported for sleeping prior to 1030 hours, that he specifically informed Brown that this was not authorized. Major Comello asked the Board for permission to refer to a record of interview form in order to refresh his memory on this particular point. The Dean granted this permission. Major Comello read from the record of interview, which reflected that he had informed Cadet Brown that he was not allowed in bed prior to 1030 hours. Major Comello stated that his experience as a Tactical Officer and as a staff officer caused him to believe that it was common knowledge among cadets in regular companies that they were not allowed to sleep prior to 1030 hours even if their rooms were in PMI order. Asked whether he believed that it was unusual for a cadet to stay in the Boarder's Ward for as long a period as had Brown, Major Comello replied, "Perhaps unusual to a degree, however, it was policy that cadets would remain

in the Boarder's Ward until the final disposition of their respective cases had been determined." He added that although the 16.03 Board of Officers concluded on 26 April, that the Superintendent, USMA, did not act on the recommendations of that Board until much later. He explained that the delay was due to the amount of time required to type the verbatim report of the Board as well as to complete other administrative requirements associated with the board action. He added that Brown remained in the Boarder's Ward subsequent to 26 April because he still was pending possible separation or suspension. Asked whether the authorized absence list was used for cadets in the Boarder's Ward, Major Comello replied that an authorized absence list only pertained to cadets in regular companies, not to cadets quartered in the Boarder's Ward. He added that authorized absences from the Boarder's Ward were determined by entries made in the Boarder's Ward Departure Book. Asked who the reporting officer was for the 23 May offense (the several absences from class), Major Comello replied that he was. Asked if he could explain how only one absence (5 May) out of numerous absences had come to light by the standard procedure used to identify such absences, Major Comello replied that he believed the section marcher slips were being forwarded to Brown's company (A-4) where the cadet responsible for determining authorized absences probably assumed that because Brown was in the Boarder's Ward he was authorized to miss classes. Major Comello

added that possibly a different cadet had received the 5 May slip and had forwarded it to his Tactical Officer for determination of Brown's authority. Major Comello stated that the Tactical Officer had delivered this particular section marcher slip to him, and that he in turn had reported Brown "Absent from Class." (Cadet Brown offered no excuse for this absence and therefore was awarded eight demerits --unintentional offense.) Major Comello stated that the 5 May absence had not subsequently been considered by a Commandant's Board because Brown already had received an appropriate punishment for that offense and therefore should not be punished again for the same absence. Asked when he had crossed out the 5 May absence on the USMA Form 2-1, Major Comello replied that he could not recall, however, that the initials certainly were his and that the only reason he would have had to line out the 5 May absence would have been to preclude the Commandant's Board from considering the same offense twice; that there was no attempt on his part to manipulate anything for or against Cadet Brown. Major Comello emphasized that he believed the 5 May award should stand by itself because it was processed before the other absences came to light. Brown stated that he did not consider this fair; that all absences should have been treated in the same fashion. Major Comello stated unequivocally that there was no question in his mind that Brown had been advised of his requirement to attend classes. Brown asked where it

stated that a cadet could not sleep prior to 1030 hours. Major Comello replied that Regulations, USCC, only granted this privilege to members of competing corps squads. Brown stated that Regulations, USCC, although granting this privilege to corps squad members, did not specifically deny other cadets the privilege. Brown stated that it was his experience, as a member of Company A-4, that if the company were allowed to have rooms in PMI order, all could sleep prior to 1030 hours. Major Comello stated that rooms in PMI order still were subject to inspection until 1030 hours and that he believed this to be the policy in Company A-4 as well as in any other company. Brown stated that it was generally understood that one could sleep prior to 1030 hours, when the room was in PMI order. Major Comello again stated that Brown's status in the Boarder's Ward was such that he was not allowed to sleep prior to 1030 hours and that he believed this to have been fully understood by Brown. Brown asked Major Comello whether, if he had noticed the 5 May absence on the USMA Form 2-3 prior to forwarding it to the Commandant's Board, he would have had the form retyped. Major Comello replied that he would not have done so because line-outs were permitted on this form. At 0940 hours, Major Comello was dismissed, Brown having no questions.

At 0940 hours, Colonel Rogers departed and was replaced by Mr. John I.

Woodruff, Deputy Director of Admissions and Registrar.

At 0942 hours, Brown indicated that he had prepared a supplemental affidavit which he desired to present to the Board. A copy of this affidavit was distributed, entered into the records as Exhibit J, and read by all members of the Board. A member of the Board, noting that Brown's new affidavit challenged the legal sufficiency of the Commandant's Boards of 28 April 1972 and 24 May 1972 (in the first instance because the punishment award had not been personally approved by the Commandant of Cadets--as stated in the Commandant's SOP--but rather by the Deputy Commandant of Cadets; in the second instance for this same reason plus the fact that in this instance the Deputy Commandant had substituted his own findings for those of the Board and had prescribed a greater punishment than that recommended by the Board), asked Brown whether he had any questions on the legality of special orders which were signed "For the Commandant of Cadets." Brown replied that he did not. A member of the Board stated that if he, Brown, considered these special orders to be legal, then the awards listed on such orders also should be considered legal. Brown replied that he did not believe this to be correct because the approving authority is a link in the processing of delinquencies; therefore, if the approving authority is an incorrect person in the sense of authority, then the award should not be correct.

Asked hypothetically whether the Commandant, should he decide to tell the Deputy Commandant to do something or to change a certain procedure, had to give such an order in writing, Brown replied that he did. Brown acknowledged that a Deputy Commander does act in the place of the Commander and also that it was acceptable for the Deputy Commandant so to act for the Commandant. Asked whether he considered an SOP to be the same as a regulation, to have the same force as a regulation, Brown replied that he did not know. Brown stated that he knew what an SOP was and acknowledged that an SOP was established by the commander; moreover, that the commander could make a change to an SOP without putting it in writing. It was pointed out that a commander can make a change to an SOP anytime he desires, that there are no legal constraints to an SOP. Given a hypothetical situation by a member of the Board in which Brown was cast in the role of a commander, Brown stated that he would not question the legality of his Executive Officer taking action on certain items in his absence. It was pointed out that for practical purposes an informal arrangement must exist between the Commandant and the Deputy Commandant whereby the handling of certain matters can be altered without the requirement for a formal change to the established SOP. It was further pointed out that the Delinquency SOP in effect during the period in question was dated prior to Brigadier General Walker's arrival at West Point and that he, therefore, was even more

likely to be making informal changes as deemed necessary. Brown stated that he believed the offense of 16 May to be incorrect because the S1, USCC, had improperly interjected new evidence into the case subsequent to the Commandant's Board. Brown clarified this point by stating that the offense was correct--that only the punishment (fifteen demerits, twenty-two punishment tours, and one month confinement) was wrong because the Deputy Commandant had raised the punishment award recommended by the Board to include one month of confinement. At this time, the Social Science Research Paper connected with the offense of 16 May was introduced into the record as Exhibit K. A member of the Board, noting that Brown's new affidavit objected to certain statements made by the S1, USCC, as a part of his recommendation to the Deputy Commandant as to disposition of the Board action associated with the 16 May offense....objection on the grounds that these statements constituted new evidence not contained in the record and which may have influenced the Deputy Commandant in his decision to increase the punishment, asked Brown whether he was questioning the validity of the S-1's statements. Brown replied that he was not. Asked to refer to these specific statements (found on page 2 of the supplemental affidavit), Brown stated that he had contacted his instructor by phone the night before, and therefore that his instructor had not had access to the paper. He stated that he did not believe he had put his instructor on

the spot.

Discussion turned to the offense mentioned in paragraph 4 of the supplemental affidavit. Asked whether his contention on this offense was still based on the 5 May absence being considered twice and whether he still believed that the number of demerits should be reduced from forty-five to thirty, Brown replied affirmatively.

He added that his contention was now based on one additional fact, this being that although the offense for missing classes was reported on 23 May, the last absence had occurred prior to the Commandant's Board for the offense of 16 May. Thus, according to the rules, the Commandant's Board for the offense of 23 May should not have been considered as a second board within a twelve-month period. Brown stated that he had no additional testimony to offer at this time. At 1030 hours, the Academic Board went into closed session. Cadet Brown and Major Cole were not present during the closed session.

At 1600 hours, Major Cole and Cadet Brown returned to the Faculty Lounge. Brown was reminded that he was still under oath. The Dean informed Cadet Brown that he remained deficient in conduct and

informed him of those demerits which were removed, as follows:

<u>Date</u>	<u>Code</u>	<u>Offense</u>	<u>Demerits Removed</u>
16 Feb 72	410	Taking advantage of privilege when unauthorized, unintentional	10
3 Mar 72	846	Dust or dirt on article	1
3 Mar 72	863	Article improperly displayed	1
3 Mar 72	862	Trash in waste basket at inspection	1
25 Apr 72	877	Room not in prescribed order	4
5 May 72	223	Absent from formation and missing all instruction or duty unintentional	8
24 May 72	908	Gross lack of judgment (Repeated absences from English and Military Art classes)	15 (30 demerits remain, reduced from 45)

The character of the following award was changed from the status of a commandant's award to that of a lesser award. No change in the number of demerits resulted.

<u>Date</u>	<u>Code</u>	<u>Offense</u>	<u>Demerits</u>
16 May 72	908	Gross lack of judgment in preparation of research paper	15

Forty demerits were removed from an original accumulation of 158.

The record as adjusted contained 118 demerits which is 16 in excess of the 102 demerits allowed. Therefore, the Academic Board found Cadet Brown to be deficient in conduct.

Brown requested that the Academic Board call those witnesses he had previously selected to testify concerning his potential. Major Cole departed to contact the witnesses and returned at 1637 hours.

Brown requested that he be allowed, prior to calling witnesses who were present at his request to testify in his behalf, to identify the specific area in which such witnesses should be questioned.

Brown stated that upon return to West Point this past summer, he was assigned to Camp Buckner and worked for Major Rumph (OMI) in the ADA Instruction Division.

At 1640 hours, Major Robert R. Rumph, ADA, reported to the Board and was sworn in. He stated that his present duty assignment was as ADA Instructor, Office of Military Instruction and that as a Committee Chief at Camp Buckner this past summer, Brown had worked for him. The Dean stated that the Academic Board was conducting a hearing on Brown's reported deficiency in conduct and that presently the Board was discussing Brown's potential for retention. Major Rumph stated that although Brown was assigned to him for some fourteen days, that actually there were only five training days involved. He stated that Brown was assigned to his section because ADA training was one of the few areas of training still being conducted and that he recently had lost support troops which had been conducting training on the Redeye. Major Rumph stated that he rated Brown as an average cadet against a tendency to rate the majority of cadets higher than average. He added that Brown's instructional ability was good. Major Rumph stated that he had no other cadets working for him and that in addition to instructing, Brown's duties were not precise and varied from day to day. Asked how many cadets he had rated since his arrival at West Point, Major Rumph replied approximately twenty-five and that he had rated only one cadet unsatisfactory. Based on his observation, Major Rumph testified that Brown had done an average job, that he believed Brown would be nothing more than an average officer, and that he would not desire to have an average officer serve in his

command. Major Rumph stated that had he been in Brown's position, he would have tried much harder. He indicated that for a man in such a tenuous position, Brown did not really put out. At 1650 hours, Major Rumph was dismissed, Brown having no questions.

Brown stated that Captain Smith, the next witness, was his English instructor during the first term. At 1655 hours, Captain Daniel M. Smith, MI, reported to the Board and was sworn in. He stated that his present duty assignment was an instructor in the Department of English and that Brown had been a member of the section to which he had taught English (EN) 402 during the first sectioning period this year. The Dean stated that the Academic Board was conducting a hearing to consider Brown's reported deficiency in conduct and that presently it was considering Brown's potential for retention. The Dean asked Captain Smith to relate to the Board his opinion of Brown's potential. Captain Smith stated that he believed Brown to be quite intelligent and that he had been favorably impressed with Brown's responses to questions asked in the classroom. He stated that Brown was very attentive during class. Captain Smith also indicated that he was aware that Brown was repeating EN 402 (having failed it the previous year), that Brown's attitude was above average, and that he possessed average leadership ability; however, that this leadership assessment was primarily a "guesstimate" because he, Captain Smith, had not observed

Brown in a leadership position. He stated that his only contact with Cadet Brown had been in the classroom and through papers which Brown had submitted. He added that on the one required research paper Brown had done an excellent job, presenting a very sophisticated argument. At 1704 hours, Captain Smith was dismissed, Brown having no questions.

Brown stated that his next witness, Cadet Charles T. Hutzler, had been a company mate in A-4 for three years and presently was the Cadet Battalion Commander of the 1st Battalion, 4th Regiment. At 1709 hours, Cadet Captain Charles T. Hutzler reported to the Board and was sworn in. The Dean stated that the Academic Board was conducting a hearing to reconsider Brown's reported deficiency in conduct and that presently it was considering his potential for retention. Hutzler stated that his present duty assignment was Battalion Commander of the 1st Battalion, 4th Regiment and that he was a personal friend of Brown. He said that at no time during the three years they were together in Company A-4 had he been under the personal supervision of Brown. Hutzler stated that people believed that Cadet Brown lacked ability because of his poor personal appearance. Hutzler stated he had observed that people under Brown's supervision always did their jobs. He said that Brown did not fit in with cadet life, but that this fact did not necessarily doom him as an officer. Hutzler said that in the strict environment of Company

A-4, he believed that Brown was lucky to have progressed as far as he had without being separated. He believed that Brown could make it as an officer and that he would not hesitate to serve under him. Hutzler stated that Brown's substandard appearance did not at any time detract from his performance. He indicated that things started going bad for Brown during his Second Class (junior) year when he started gaining weight and letting his personal appearance slip below standard. He stated that Brown was not a "straight arrow" cadet, however, that everyone in the company liked him. He said that Brown was very open-minded and tended to question why certain things had to be done. He stated that on several occasions he had heard Brown complaining about the system. Asked whether he considered complaining to be the best way to express divergent views, Hutzler replied that he did not. He stated that in Company A-4 it was policy that what was directed was done with few questions asked and that for this reason Brown had displayed little tact and understanding in complaining as he did, and that certainly he had set a bad example for the underclasses. Asked why he believed Brown had gotten into the trouble he was in, Hutzler replied that he believed there were two reasons: (1) An apparent personality conflict between Brown and his Tactical Officer, and (2) the strict environment which existed in Company A-4. Hutzler added that he believed there was a possibility that Brown might have made it in another company. Hutzler

stated that he would rate Brown as an average cadet now and would have rated him average at the end of the last academic year. Brown asked Hutzler to tell the Board about his (Brown's) physical and athletic ability. Hutzler stated that although Brown did not appear to be in good physical shape, in fact he was, as evidenced by his excellent performance on the company intramural wrestling team. At 1730 hours, Hutzler was dismissed, Brown having no further questions.

Brown stated that Cadet Pearson, the next witness, was the Battalion Supply Officer during the first detail this year and that presently he was a company mate in Company F-2. At 1733 hours, Cadet Sergeant William R. Pearson, Company F-2, reported to the Board and was sworn in. He stated that during the first detail this year, he was the Battalion Supply Officer and that Cadet Brown was the Supply Sergeant for F-2. The Dean stated that the Academic Board was conducting a hearing to reconsider Cadet Brown's reported deficiency in conduct, and that the Board presently was considering Brown's potential for retention. He asked Pearson to state his opinion of Brown's potential. Pearson stated that he had not known Brown prior to the start of this academic year. Pearson stated that Brown had done a good job as supply sergeant and that of the three supply sergeants under his supervision, he would rate Brown as number two. He said that Brown always did what he had been asked to do, and that as he became better acquainted with people

(being a newcomer to Company F-2), his work improved. He stated that Brown tended to do only what was asked of him, but that he had demonstrated initiative as the detail progressed by submitting requirements well before suspense dates. At 1741 hours, Pearson was dismissed, Brown having no questions. At 1745 hours, the Academic Board recessed to reconvene at 1930 hours.

At 1935 hours, the Academic Board reconvened. All persons present prior to the recess again were present. Brown was reminded that he was still under oath. Brown stated that Cadet Kelly, the next witness had been a company mate of his for three years and that during the time that he, Brown, served as a platoon leader, Kelly was a member of his platoon. At 1930 hours, Cadet Sergeant Kevin Kelly, Company A-4, reported to the Board and was sworn in. He stated that he was a personal friend of Brown and that during the last academic year he had been a member of Brown's platoon. The Dean stated that the Academic Board was conducting a hearing to reconsider Cadet Brown's reported deficiency in conduct, and that the Board presently was considering Brown's potential for retention. The Dean asked Kelly to tell the Board his opinion of Brown's potential. Kelly stated that as a member of Brown's platoon he always received information on time and that Brown had done a "pretty good job as a platoon leader." He stated that he did not believe Brown got along very well with his Tactical Officer. He stated that in Company A-4 there was

a tendency for some people to gang up on an individual who was in trouble. Kelly stated that although certain people ganged up on an individual, he did not know of any demerits being awarded by such "cliques." Cadet Kelly believed that Brown was an average cadet. Asked whether he was aware of Brown's conduct problem, Kelly replied that he was aware of the AWOL incident. He stated that when Brown wants to do something, he can, and that he can succeed whenever he puts his mind to it. Asked whether he considered Brown to exercise good judgment, Kelly replied that he did. Kelly said that he did know why Brown got himself into demerit trouble. He stated that Brown was not known as a hard worker and would be considered average. Kelly stated that he believed if a room were in PMI order that cadets could sleep prior to 1030 hours. Asked whether he would like to serve with or under Brown in combat, Kelly replied that he would. Brown asked whether it appeared to him that the Tactical Officer went looking for things when an individual was in trouble. Kelly replied that it appeared so to him. Asked whether he believed Brown exercised good judgment when he went AWOL, Kelly replied that he did not but added that people do make mistakes. Asked whether cadets in Company A-4 were aware of Brown's standing in aptitude, Kelly replied that there was some knowledge; however, to what extent he did not know. At 1955 hours, Cadet Kelly was dismissed, Brown having no further questions.

Brown stated that Commander O'Connell, the next witness, had been his history instructor last year and during the first term this year. At 1957 hours, Commander Jerome A. O'Connell reported to the Board and was sworn in. He indicated that he presently was an instructor in the Department of History and that Cadet Brown was one of his students. The Dean stated that the Academic Board presently was conducting a hearing to reconsider Brown's reported deficiency in conduct and that it presently was considering his potential for retention. He asked Commander O'Connell to tell the Board his opinion of Brown's potential. Commander O'Connell stated that he was favorably impressed with Brown as a student and would rate him slightly above the mean. He said that Brown handles himself well in a social environment. Commander O'Connell stated that he was not aware of Brown's conduct problem until a few weeks ago and that even today was not completely aware of all the facts. Asked whether he would like to serve with Brown, Commander O'Connell replied that he would be pleased to have Brown serve with him. At 2002 hours, Commander O'Connell was dismissed, Brown having no questions.

At 2004 hours, Cadet Captain Mark S. Piontek, Company F-2, reported to the Board and was sworn in. He stated that he was the Company Commander of Company F-2, the company to which Brown presently was assigned. The Dean stated that the Academic Board was conducting a hearing to reconsider Brown's reported deficiency in conduct and that it presently was considering

his potential for retention. The Dean asked Piontek to tell the Board his opinion of Brown's potential. Piontek stated that Brown did not devote a lot of time to his duties, however, that because Brown always seemed able to meet all requirements he had concluded that Brown was quite efficient. Piontek stated that on several occasions he had found it necessary to correct Brown for his personal appearance and room appearance. He stated that Brown has made a few friends in the company, however, that he had not associated too much with the majority of the company. Piontek stated that out of twenty-nine First Classmen (seniors) in Company F-2, based on his overall potential for the service, he would rate Brown in the middle third. He stated that he would like to have Brown serve under him in combat and would not object to serving under Brown in a similar situation. At 2015 hours, Cadet Piontek was dismissed, Brown having no questions.

Brown stated that Cadet Skiver, the next witness, had been the Company Administrative Officer during the first detail and presently was his roommate. At 2016 hours, Cadet Sergeant Robert Edward Skiver, Company F-2, reported to the Academic Board and was sworn in. He stated that during the first detail he was the Company Administrative Officer and that presently he was Cadet Brown's roommate. The Dean stated that the Academic Board was conducting a hearing to reconsider Brown's reported deficiency in conduct and that it presently was considering his potential

for retention. The Dean asked Skiver to tell the Board his opinion of Brown's potential. Skiver stated that Brown was highly motivated toward a career as an officer in the United States Army and that he, Skiver, personally believed that Brown's intense desire to be commissioned in the combat arms was commendable. Skiver stated that when Brown was given a task he always accomplished it. Skiver stated that Brown was well versed and extremely interested in the military profession. Asked to comment on the sincerity of Brown's motivation to be an Army officer, Skiver said he believed it to be sincere. Skiver stated that although their room would not be considered a model room, it always looked neat and orderly. At 2026 hours, Skiver was dismissed, Brown having no questions.

At 2028 hours, Major Courtney M. Rittgers, IN, reported to the Board and was sworn in. He stated that his present duty assignment was Tactical Officer, Company F-2, the company to which Brown was presently assigned. The Dean stated that the Academic Board was conducting a hearing to reconsider Brown's reported deficiency in conduct and that it presently was considering Brown's potential for retention. The Dean asked Major Rittgers to tell the Board his opinion of Brown's potential. Major Rittgers stated that he saw no reason why Brown should not be a successful officer; that he had performed all duties in a satisfactory

manner. He said that although Brown was not as mature as he would desire, out of twenty-nine First Classmen (seniors) in Company F-2, he would rate Cadet Brown approximately sixteenth. He said that he did not intend to imply that Brown did not have any shortcomings, for in fact he did. He stated that two specific deficiencies were his overweight condition and substandard personal appearance. Major Rittgers stated that he believed Brown would perform his duties as an officer in a satisfactory manner, however, he did not believe that Brown possessed the potential to rise to positions of high rank and responsibility. Major Rittgers stated that when Cadet Brown was assigned to his company that he did not examine Brown's records because he wanted to insure that Brown had a fresh start in his company. He stated that everything he knew about Brown's conduct situation had been told to him by Brown's counsel, Captain Belcher. Asked to clarify what he meant by his statement that Brown would not rise to positions of high rank, Major Rittgers replied that he believed that with continued effort Brown could rise to the rank of a senior field grade officer. He added that in order for Brown to do so, he must mature, improve his personal appearance, and assume a more serious attitude about the United States Army as a profession. Asked whether he had observed Brown display any initiative, Major Rittgers replied that he had reservations about Brown's initiative; that he tended to do only

what was asked of him and nothing more. He said that Brown had informed him that he desired to be an Army officer. Asked whether he would like to have Brown assigned as a member of his unit, Major Rittgers replied that he would welcome the opportunity to work with Brown and further develop him as a member of his unit. Asked whether he considered the demerit allowance for a cadet to be reasonable, Major Rittgers replied that the allowance was more than generous and that a cadet truly desiring to be an officer could reasonably stay within the allowance. Major Rittgers stated that if a cadet failed to meet the minimums in any one of the following areas--academics, conduct, leadership, or physical education--that he should be considered for separation. Given a hypothetical case of a cadet in the middle half of his class in aptitude who had significantly exceeded his demerits for a given term, Major Rittgers was asked what his recommendation would be as to the action to be taken with respect to such a cadet. Major Rittgers replied that if the cadet had been properly counseled during the term and still had significantly exceeded his demerit allowance, he would conclude that the cadet had ignored all advice and that he, therefore, would consider the cadet to be deficient in conduct and would recommend that he be separated. Major Rittgers stated that if a cadet were found to be deficient in conduct that he should be dealt with accordingly, notwithstanding subsequent performance. Thus, in the case of Brown, Major Rittgers indicated that

Brown's deficiency in conduct should not be mitigated by his performance subsequent to his return to the Military Academy. At 2054 hours, Major Rittgers was dismissed, Brown having no questions.

At 2055 hours, LTC Leonard Wishart, IN, reported to the Academic Board and was sworn in. He stated that his present duty assignment was Cadet Activities Officer, USCC, but that during the past academic year, he was the Regimental Executive Officer, 4th Regiment. The Dean stated that the Academic Board was conducting a hearing to reconsider Brown's reported deficiency in conduct and that presently it was considering Brown's potential for retention. The Dean asked LTC Wishart to tell the Board his opinion of Brown's potential. LTC Wishart stated that his testimony would be based on at least three personal contacts with Brown, review of records and other administrative actions, and numerous discussions with Brown's Tactical Officer. LTC Wishart stated that he believed Brown to be lazy, self-centered, and lacking in self-discipline. He stated that Brown had the basic tools such as intelligence and physical ability, but that he lacked the intangibles such as self-control and desire. He stated that Brown did not possess the necessary self-discipline to subordinate his own desires to those of the group. He indicated that Brown had failed to set the example for his subordinates and that he did not believe that Brown would turn over a new leaf and do so after graduation. LTC Wishart stated that at the end of the last

academic year, he had concluded that Brown should not be commissioned but added that he had not had the opportunity to observe Brown this academic year. He stated that in personal dealings with Brown that he had observed Brown react to correction in an immature manner. Asked to cite a specific example, LTC Wishart replied that on one occasion he had observed Brown, while in a responsible position, fail to control his unit. LTC Wishart stated that when he called Brown aside to discuss the matter with him that Brown did not appear to be at all interested or receptive. LTC Wishart added that when the unit moved out, the horseplay in ranks continued and that Brown made no attempt to correct the situation. LTC Wishart stated that he had discussed Brown with Brown's company commander, then Cadet Kruger. LTC Wishart said that Kruger had expressed the view that Brown had the basic ability but was unwilling to demonstrate it. He said that Kruger also had indicated that he considered Brown unwilling to go along with any group requirement placed on the company. On the other hand, LTC Wishart stated that Kruger thought highly of Brown and wanted to help him. Asked whether he believed that Brown was capable of performing in a manner exceeding that indicated in his record, LTC Wishart replied affirmatively. Asked whether he was aware of any cliques in Company A-4 that used the leadership rating system as a means to "gang-up" on individual cadets, LTC Wishart replied that he was not, and he then

expressed the view that Company A-4 was one of the better companies in the regiment. LTC Wishart stated that he was aware that Brown had exceeded his demerit allowance during the second term last year. Asked whether he knew if any demerits had been awarded for Brown's AWOL offense, LTC Wishart replied that he did not think so; that he believed the Board of Officers had recommended suspension and turn-back. LTC Wishart stated that presently he considered Brown to possess little potential for retention and continued to believe that he should not be commissioned. Given Brown's situation, LTC Wishart stated that during the time Brown was in the Boarder's Ward awaiting final disposition, one would have thought that Brown would have played it as straight as possible if he truly were sincere in his desire to graduate and be commissioned. Asked whether he was familiar with the details of the AWOL case, LTC Wishart replied that he was. Asked how well he knew Brown's Tactical Officer of last year and whether he was familiar with that officer's opinion of Brown, LTC Wishart replied that he knew the Tactical Officer quite well and believed that his opinion was similar to his own. LTC Wishart stated that Brown had been conditioned in aptitude during the first term last year and that at the end of that term, his Tactical Officer had strongly recommended that this condition be removed. He added that the Tactical Officer had been successful in having Brown's condition removed, believing that during the second term he could observe

Brown's performance and make a determination whether Brown's improvement during the first term was real or only a reaction to being placed in a conditioned status. LTC Wishart stated that on several occasions during the second term the Tactical Officer had told him he believed that Brown's improvement during the first semester was not a real and lasting improvement but rather only a reaction to his conditioned status. LTC Wishart said that Brown's Tactical Officer believed that Brown should not be commissioned. Asked whether Brown's classmates found him likeable, LTC Wishart replied affirmatively. LTC Wishart was asked to relate to the Board what he knew of the AWOL incident. LTC Wishart stated that the incident took place in March 1972 at a time when Brown was serving confinement for the punishment received for taking unauthorized privileges. Major Wilson, Brown's Tactical Officer at the time, was called to the Central Guard Room where he was informed that Brown had been involved in an automobile accident. LTC Wishart said that Brown had been playing cards and drinking alcohol in the barracks with other cadets. When these cadets were sure that there would be no further inspections, they decided to go off post in Brown's car. They stopped at a party in Highland Falls where they consumed several beers. After leaving the party, they proceeded south on 9W, the car went out of control on a corner, and the accident occurred. Brown had a beer with him in the car, however, the policeman at the scene determined that alcohol was not

involved. Brown's Tactical Officer, Major Willson, indicated that he had smelled alcohol on Brown's breath when he saw him after the accident.

Asked whether the facts as related by LTC Wishart were true, Brown replied that they were with two exceptions: He did not have a beer with him in the car, and his Tactical Officer saw him in his room rather than the Central Guard Room.

Asked whether the Academic Board could conclude that he drank alcoholic beverages in the barracks, broke restriction, was AWOL, and was involved in an automobile accident, Brown replied that it could.

Brown stated that at the time of this incident, he had about thirty-four demerits, and that he did not receive any demerits for this offense.

Asked what the disposition was of the other cadets involved, Brown replied that there were three other cadets involved and their disposition was as follows: Cadet Wilson was suspended immediately and turned back to the Class of 1973; action was not taken on Cadet McGuire until after Brown's 16.03 Board, at which time he appeared before a Commandant's Board, was given a punishment causing him to exceed his demerit allowance, and accordingly was declared deficient in conduct and turned back to the Class of 1973 by the Academic Board; the third cadet involved (unnamed) was authorized to be off post, received no punishment, and was graduated

in June 1972.

Asked how many demerits McGuire had been awarded by the Commandant's Board for the offense, Brown replied that it was either 55 or 70 demerits. Brown stated that the offense for which McGuire had been reported was "Breaking Confinement and AWOL."

Asked whether he had been conditioned in aptitude at the end of the second term, second class year, Brown replied that he had but that the condition was removed after the first term of his first class year.

Asked whether the forming of cliques within companies would become apparent to officers in the Regimental Headquarters, LTC Wishart replied that he would like to think so, that during the year he had heard allegations of such cliques in other companies, but not Company A-4.

When asked, Brown stated that he did appear before a Category I and a Category II Aptitude Board near the end of his second term, first class year; however, that he also did not remember much about these boards because during that period he also had appeared before several Commandant's Boards as well as the 16.03 Board of Officers. Brown asked LTC Wishart if he knew that the reason he was so low in his class in aptitude, second term, first class year, was because of the low grade his Tactical Officer

gave him. LTC Wishart replied that he was not aware of this.

At 2144 hours, LTC Wishart was dismissed, Brown having no further questions.

The Dean asked Brown if he had anything further he would like to present to the Board. Brown stated that he had never been in demerit trouble prior to the second term of his first class year, and had never appeared before a disciplinary board prior to that time. He believed that his trouble started when he received ten demerits and fourteen confinement periods for taking unauthorized privileges, for it was while he was in confinement for this offense that he went AWOL. He stated that he did not exercise good judgment in going AWOL; that he took a calculated risk thinking that if he were caught he would only be required to appear before a Commandant's Board.

Brown stated that although his resignation was solicited, he elected to appear before a Board of Officers for the AWOL offense. Brown indicated that he was moved to the Boarder's Ward and never really knew whose control he was under. He stated that he felt as though he was sealed off from his company; that he was not allowed to participate in intramurals with his company. He said that "things just snowballed on him." Brown stated that the S-1, USCC, and the Deputy Commandant told him that he could appear before a Board of Officers and that the best outcome would

be turn-back and the worst a dishonorable discharge. He stated that during his stay in the Boarder's Ward there was a lot of pressure on him. He said he felt people thought that the 16.03 Board of Officers had made a mistake in not separating him and hence were out to get him. He stated that he saw this period as a time to fight back, a time to lash out at the system. Asked whether he believed that he had made a conscientious effort to rewrite the Social Science paper, Brown replied that he did and that he thought he should have received a higher grade.

Brown stated that he was denied spring leave to await the decision of the Commandant's Board for the AWOL offense.

Asked whether his resignation was "solicited" or he was given the "option" to resign, Brown replied that he was given the "option" to resign; however, that he thought that the emphasis was on the option of resigning rather than appearing before a Board of Officers. Brown stated that he was told it was possible that he might receive a dishonorable discharge, however, when questioned on that point, was not sure if he had been told a dishonorable discharge or a discharge other than honorable. He added that he believed the Deputy Commandant had said something about a discharge other than honorable. It was pointed out that a dishonorable discharge could be given only as a result of a court-martial, to which Brown replied that there had been no mention at all of a court-martial.

Brown said that he had entered West Point to become an officer and that he believed he was capable of becoming a good one. He stated that all the time, money, and effort he had spent to get back in subsequent to his separation should clearly demonstrate his strong desire to graduate. He added that even though he had been separated without a service obligation, he still chose to come back. Brown stated that right now he could not positively state that he would make a career of the Army, but that to do so was the reason he had entered West Point.

Asked whether he had any other matters to present to the Board, Brown replied that he objected to Major Comello being brought back to testify when three of his witnesses (Dull, Coonan, and Cook) were not brought back. The Dean stated that Brown had every right to get these three witnesses to West Point for the purpose of testifying and that Major Comello had come to West Point on his own and at his own expense. The Dean added that the Board had not "brought him here." It was pointed out that Major Comello's testimony only concerned the conduct portion of the hearing and that testimony on potential was not heard from that individual.

Asked whether he knew the nature of the testimony Dull, Coogan, and Cook would offer, Brown replied that he did and stated that they would be favorable witnesses for him.

The Dean stated that the Board would be willing to allow Brown to give testimony on what each of these witnesses would say; however, Brown did not desire to do so because he did not feel qualified.

Asked why he did not request a written statement from these witnesses, especially since he had well over a month to do so, Brown replied that he had difficulty contacting them. It was pointed out that the telephone numbers and locations of these three witnesses had been available to Brown since mid-December. In response to a question, Brown stated that he knew where each of the witnesses was stationed.

At 2220 hours, the Board went into closed session. Cadet Brown and Major Cole were not present during the closed session.

At 2300 hours, Cadet Brown and Major Cole were called back into the Faculty Lounge. The Dean asked how much time it would take to get written statements from Dull, Coogan, and Cook; that the Board was perfectly willing to recess until such time that the statements were available. Brown requested that he be allowed to call his counsel to discuss the matter.

At 2307 hours, the Board recessed to allow Brown to contact his counsel.

At 2320 hours, the Board reconvened. All persons present prior to the recess again were present. Brown stated that written statements were

not good enough and that he wanted the Board to make arrangements to get the three witnesses to West Point.

The Dean stated that the Board had desired to continue the hearing on 2 January 1973, however, that Brown had refused this offer and that it was understood that Brown would return from leave prepared to continue with the hearing. The Dean stated that he personally had made a special effort to make this latter point clear before recessing the Board prior to the Christmas leave period. The Dean stated that it appeared obvious that Brown had made little effort to have these three witnesses return to West Point. Brown stated that if the three witnesses could not be brought back to testify that he did not desire a written statement. Asked whether he desired that the three witnesses be brought back at Government expense, Brown replied affirmatively. It was pointed out that Major Comello had returned at his own expense, did not take leave, as Comello personally had stated during the hearing, was required to depart West Point by noon in order to attend a class later that evening. The Dean stated that Cadet Brown, by his own admission, had made very little effort to contact the three witnesses.

At 2332 hours, the Board went into closed session. Cadet Brown and Major Cole were not present during the closed session. At 2350 hours, Cadet Brown and Major Cole were called back into the Faculty Lounge. The Dean

indicated that the Board had taken note of the fact that if Bull, Coognan, and Cook did not return to testify, that Brown did not desire written statements.

The Dean stated that the Academic Board finds that Cadet Brown was Deficient in Conduct for the period 21 December 1971 to 7 June 1972 and that he does not have the potential to warrant retention. Accordingly, the Board recommends that appropriate action be taken to separate Cadet Brown from the United States Corps of Cadets.

At 2352 hours, the hearing was closed.


Exhibits:

- A - Secretary Academic Board letter to Cadet Brown, Subject: Deficiency in Conduct, dtd 27 Dec 72
- B - 1st Ind to 27 Nov letter, dtd 4 Dec 72
- C - 2nd Ind to 27 Nov letter, dtd 8 Dec 72
- D - Secretary Academic Board letter to Cadet Brown, Subject: Witnesses at Academic Board Hearing, dtd 15 Dec 72
- E - 3rd Ind to 27 Nov letter, dtd 18 Dec 72
- F - 4th Ind to 27 Nov letter, dtd 21 Dec 72
- G - Cadet Brown Affidavit, dtd 21 Dec 72
- H - Packet of Individual 2-1 Forms
- I - Compilation of documents previously furnished Bd members and Cadet Brown pertaining to delinquency record of Cadet Brown marked by TABS A - I
- J - Cadet Brown Supplemental Affidavit
- K - Soc Sci Research Paper

INDIVIDUAL DELINQUENCY RECORD

A-192

NAME - LAST, FIRST, MIDDLE, INITIAL		COMPANY	REGIMENT	CLASS OF			
DATE	OFFENSE	REPORTING OFFICER	PUNISHMENT				P.T.
			DE-MERITS	MO. EXTEN.	CONF.		
8 Jan 863	Articles improperly displayed	9	1				
15 Feb 805	In need of a haircut at W.P.	1	5				
16 Feb 410	Taking advantage of priv when unauth, unintentional	1	10		14		
22 Feb 823	Not in public spotted unpresed clth	7	2				
23 Feb 430	Signing in or out improperly	7	2				
26 Feb 805	In need of a haircut at W.P.	8	5				
26 Feb 863	Articles improperly displayed	8	1				
3 Mar 846	Dust or lint on articles	9	1				
3 Mar 863	Articles improperly displayed	9	1				
3 Mar 862	Trash in wastebasket at insp	7	1				
3 Mar 863	Articles improperly displayed	7	1				
10 Mar 816	Wearing improperly adjusted belts	1	2				
10 Mar 287	Sleeping on top of bed without making bed	7	3				
18 Mar 863	Articles improperly displayed	4	1				
25 Mar 847	Dirt/grease/excess oil/ spot on art.	4	2				
5 Apr 431	Failing to sign in or out	7	5				
17 Apr 641	Neg of prep of homework or lesson intentional	3	8		4		
18 Apr 837	Not in preser unif on public area at W.P.	2	7				
24 Apr 882	Bed improperly made	2	1				

OFI E		REPORT OFFICER	DE. MERITS	PUNISHMENT MO. EXTEN.	CONF.	P.T.
25 Apr	877 Room not in prescribed condition	2	4			A-193
25 Apr	283 Failure to comply with general orders and inst/ intentional	2	10		14	
26 Apr	428 Making minor error in record or communications	2	2			
27 Apr	430 Signing in or out improperly	2	2			
5 May	223 Abs from form & miss al insty/dy unintentional	2	8			
12 May	281 Failing to comply with specific instructions, unint	3	5			
12 May	805 In need of haircut at W.P., i.e., Tactical Officer interview	1	5			
16 May	908 Gross lack of judgment in preparation of First Class Research Paper rewrite requirement, SS 407	3	15	1		22
17 May	825 Not in public frayed/excess worn item clothing	2	3			
23 May	908 Gross lack of judgment, i.e., absent from EN402 on 11 occasions since 13 Apr, absent from Military Art an unknown number of times and making no effort to correct the situation or seek help, 23 May 72.	2	45	4		88 2
						162
ATE		TYPED (or stamped) NAME, GRADE AND TITLE OF PREPARING OFFICER		SIGNATURE		
7 May 72		DANIEL A. WILLSON Major, Armor				

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES CORPS OF CADETS
West Point, New York 10996

A-194

SPECIAL ORDERS
NUMBER 62

11 May 1972

1. Awarding of Punishment.

BALTEZORE, LAWRENCE A., 323-46-6137, CDT SGT, Co B, 2d Regt, CI:1972

Type Board: Commandant's Board

Offense Code: 932

Offense: Trafficking in alcoholic beverages not for resale, 18 March 1972.
(Reworded)

Punishment: Twenty (20) demerits, Forty-four (44) punishment, and
confinement to restricted limits for Two (2) months.

Release Date: 10 July 1972

2. Awarding of Punishment.

BROWN STEVEN F., 579-62-3072, CDT SGT, Co A, 4th Regt, CI:1972

Type Board: Commandant's Board

Offense Code: 283

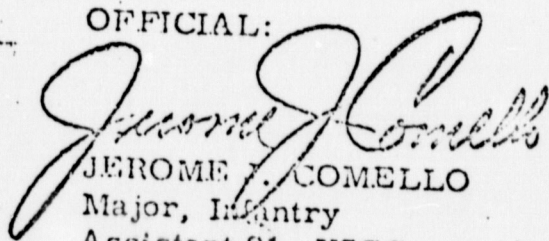
Offense: Failure to comply with general orders and instructions, written,
intentional, i. e., not having room in PMI order by the prescribed
time and by sleeping in bed prior to 1030 hours in violation of
Regulations, USCC, 25 Apr 72. (Rewritten)

Punishment: Ten (10) demerits, Fourteen (14) punishments.

Release Date: NA

FOR THE COMMANDANT OF CADETS:

OFFICIAL:


JEROME J. COMELLO
Major, Infantry
Assistant S1, USCC

ROBERT E. AYERS
LTC, CE
S1, USCC

DISTRIBUTION: D plus
10-S1, USCC

Pg 7 1000

A-195

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES CORPS OF CADETS
West Point, New York: 10996

SPECIAL ORDERS
NUMBER 72

EXTRACT

26 May 1972

82. Awarding of Punishment.

PERRY, CLIFFORD, 044-44-2867, CDT PVT, Co A, 4th Regt, Class 1975

Type Board: Cadet Brigade Board

Offense Code: 936

Offense: Under the influence of alcoholic beverages in area of barracks,
6 May 1972.

Punishment: Twenty-five (25) demerits, Sixty-six (66) punishments; and
confinement to restricted limits for Three (3) months.

Release Date: 24 August 1972.

83. Awarding of Punishment.

VOGLER, GARY L., 235-74-5257, CDT CPL, Co F, 2d Regt, Class 1973

Type Board: Commandant's Board

Offense Code: 935

Offense: Drinking in barracks, 6 February 1972.

Punishment: Twenty-five (25) demerits, Sixty-six (66) punishments, confine-
ment to restricted limits for Three (3) months, and reduction to
the grade of Cadet Private.

Release Date: 24 August 1972.

PART IV - BOARD FINDINGS AND RECOMMENDATIONS

TO Commanding Officer Regiment		FROM President Commandant's Board	
TYPE BOARD Comdt's Board	DATE AND TIME CONVENED 24 May 72 1520 hours	CONVENED UNDER AUTHORITY CONTAINED IN (Cite S.O.) Para 2, SO 139, 27 Aug 69	
BOARD MEMBERSHIP			
PRESIDENT COL BUCKLEY	MEMBER LTC TOWER	MEMBER-RECORDER MAJ MEETH	

BOARD FINDINGS/RECOMMENDATIONS

Cadet Brown reported to the President of the Commandant's Board who informed him of the Board's purpose and authority. Cadet Brown examined the delinquency report and his explanation and acknowledged that they were correct as written. In reply to the questions of the Board, Cadet Brown made the following statements:

I felt that I would complete the pass-fail rewrite requirement of attaining an 13.0 grade by correcting the English errors and attempting to answer the instructor's comments. The instructor told me that I could complete the requirement without rewriting if I thought I could.

The Board considered the facts of the case and determined that Cadet Brown committed the offense as follows: In light of confusion and state of mind of Cadet Brown the Board less the recorder agreed that the offense be changed to Offense Code 907, extremely poor judgment. The Board further considered Cadet Brown's previous disciplinary record and recommend the punishment shown below.

(NOTE: Board Findings/Recommendations will not be announced to respondent)

PUNISHMENT RECOMMENDED				
REDUCTION TO	DEMERITS 15	PUNISHMENT TOURS 20	CONFINEMENTS	MONTHS CONFINEMENT TO RESTRICTED LIMITS
DATE 24 MAY 72	TYPED NAME, GRADE, BRANCH OF PRESIDENT HARRY A. BUCKLEY, COL, INF Director: MP&L		SIGNATURE OF PRESIDENT <i>H. Buckley</i>	

PART IV - BOARD FINDINGS AND RECOMMENDATIONS

TO Commanding Officer 4th Regiment		FROM President Commandant's Board	
TYPE BOARD Comdt's Board	DATE AND TIME CONVENED 26 May 1972 1530 hours	CONVENED UNDER AUTHORITY CONTAINED IN (Cite S.O.) Para 2, SO 139, 27 Aug 69	
BOARD MEMBERSHIP			
PRESIDENT COL GRUENTHER	MEMBER LTC MCNAIR	MEMBER-RECORDER MAJ DERVAES	

BOARD FINDINGS/RECOMMENDATIONS

Cadet Brown reported to the President of the Commandant's Board who informed him of the Board's purpose and authority. Cadet Brown examined the delinquency report and his explanation and acknowledged that they were correct as written. In reply to the questions of the Board, Cadet Brown made the following statements:

The reason for his absences was insomnia. He is normally awakened by the Boarder's Ward guard for breakfast, but after eating he returns to his room and goes back to bed. He claims that even though he asks the guard to get him up for classes, he sleeps so soundly that he is not aroused by the guard or an alarm clock. He does not always ask the guard to get him up. He acknowledges being briefed on his responsibility to attend classes. He acknowledges his personal responsibility to get up in the morning in order to attend classes. He states that he failed to report to sick call for medical treatment for his insomnia because he was afraid that he would be given a psychiatric evaluation and that this evaluation, which he assumed would be adverse, would be used as further evidence in the administrative actions currently pending in his case. He admits missing an unknown number of Military Art classes which he has first hour on alternate days from English. He was unable to explain why he could get up for breakfast but not for class. He stated that he felt no obligation to consult with the Department of English regarding his absences or making up any work missed, although he had done some outside reading.

The President of the Board queried Cadet Brown in depth for evidence on which to base leniency but Cadet Brown could not offer any positive evidence that he was aware that he had a problem or that he had sought assistance. Cadet Brown described himself as being highly motivated to graduate from West Point.

The Board finds Cadet Brown's actions irrational and recommends that in addition to punishment as indicated he receive psychiatric evaluation. The Board considered the facts of the case and determined that Cadet Brown committed the offense as follows: OC 908. Gross lack of judgment, i.e., absent from EN402 on 11 occasions since 13 April, absent from Military Art an unknown number of times and making no

(NOTE: Board Findings/Recommendations will not be announced to respondent)

PUNISHMENT RECOMMENDED				
REDUCTION TO Cdt Pvt	DEMERITS 45	PUNISHMENT TOURS 88	CONFINEMENTS	MONTHS CONFINEMENT RESTRICTED LIMITS 4
DATE 30 May 72	TYPED NAME, GRADE, BRANCH OF PRESIDENT RICHARD L. GRUENTHER, COL, Director, OMI		SIGNATURE OF PRESIDENT <i>Richard L. Gruenther</i>	

(Part IV - Board Findings and Recommendations) (cc)

effort to correct the situation or seek help.

The Board further considered Cadet Brown's previous disciplinary record and recommends the punishment shown below.

Richard L. Gruenther
RICHARD L. GRUENTHER
Colonel, Infantry
Director, OMI

1. [illegible]
[illegible]

2. [illegible]
[illegible]

3. [illegible]
[illegible]

4. [illegible]
[illegible]

5. [illegible]
[illegible]

6. [illegible]
[illegible]

7. [illegible]
[illegible]
[illegible]
[illegible]

8. [illegible]
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9. [illegible]
[illegible]
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10. [illegible]
[illegible]

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[illegible]
[illegible]

[illegible]

11. [illegible]
[illegible]
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[illegible]

[illegible]
[illegible]

[illegible]
[illegible]

[illegible]
[illegible]

Exhibit C

PART V - RECOMMENDATIONS AND/OR COMMENTS

THRU (When forwarding, line out & initial)

TO

FROM

SI, USCG

Commandant of Cadets

CO, Regiment

☐ CONCUR☐ NONCONCUR FOR THE FOLLOWING REASONS:☐ CONCUR WITH THE FOLLOWING EXCEPTIONS:

NA Cadet assigned to
Borden's Ward

DATE

TYPED NAME, GRADE, BRANCH

SIGNATURE

2 Copies Received
Date June 19, 1974
Firm U.S. Attorney
By _____

(2)
COPY RECEIVED
Paul J. Curran
UNITED STATES ATTORNEY Curran
6/19/74